

# Government Gazette

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## GENERAL NOTICE

Notice 2316 of 2000

### DEPARTMENT OF MINERALS AND ENERGY

#### DRAFT GAS BILL

The Draft Gas Bill, is hereby published for public comment. Comments should be submitted in writing to:

The Director-General  
Attention: Mr TA Mohlahlo  
Department of Minerals and Energy  
Private Bag X59  
PRETORIA  
0001

Written comments may also be faxed to (012) 322 5224 or sent by e-mail to [AbielM@mepta.pwv.gov.za](mailto:AbielM@mepta.pwv.gov.za)

**Written comments must be received by not later than 04 August 2000.**

#### DRAFT GAS 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 matters concerned herewith.**

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#### CHAPTER I

#### INTRODUCTION

**Preamble.**

The Parliament of the Republic of South Africa hereby determines that it is in the economic, environmental and security interests of the Republic to encourage the safe, efficient and economic transmission, storage and distribution and trading of piped gas therein. The purpose of this Act is to promote the orderly development of the piped gas industry and to establish a national regulatory framework that balances the interests of all parties concerned. The National Gas Regulator is established as the regulator of this framework and will fulfill its mandate through inter alia the licensing of piped gas transmission, storage and distribution facilities and gas trading services.

## **Definitions.**

1. In this Act, unless the context otherwise indicates -

"**bulk storage**" means the holding of gas as a service for any other person and any other activity incidental thereto, but excludes storage in pipelines being used primarily for transmission and distribution

"**chief executive officer**" means the chief executive officer of the Gas Regulator referred to in section 10;

"**class**" means a class of gas determined by the Gas Regulator in terms of the physical and chemical composition thereof;

"**customer**" means a person purchasing gas, or purchasing transmission, storage or distribution services;

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

"**distribution**" means the division of bulk gas supplies and the transportation thereof by pipelines with a general operating pressure of more than 2 bars to points of ultimate consumption, and any other activity incidental thereto, and "distribute" and "distributing" have corresponding meanings;

"**distribution company**" means a person distributing gas;

"**distribution facilities**" means facilities used to distribute gas;

"**eligible customer**" means a customer who is eligible to buy gas directly from suppliers as prescribed;

"**gas**" means all hydrocarbon gasses transported by pipeline, including but not limited to natural gas, artificial gas, synthetic gas, coal bed methane gas, liquefied natural gas, compressed natural gas, liquid petroleum gas or any combination thereof;

"**Gas Regulator**" means the National Gas Regulator established under section 3;

"**licensee**" means any person holding a license granted by the Gas Regulator under this Act;

"**Minister**" means the Minister of Minerals and Energy;

"**non-discriminatory**" means no differentials in service, pricing or conditions may be applied, except for identifiable differences in quantity or other distinguishing feature acceptable to the Gas Regulator;

"**person**" means a person as defined in the Interpretation Act, 1957 (Act No. 33 of 1957), and includes the national government, provincial and local governments and statutory and governmental bodies and institutions;

"**prescribed**" means prescribed by regulation;

"**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 up to a boundary of the factory, and any other activity incidental thereto, and "produce" and "producing" have corresponding meanings;

"**regulation**" means a regulation made under section 28;

"**reticulation**" means the division of bulk gas supplies and the transportation thereof by pipelines with a general operating pressure of 2 bars or less than 2 bars to points of ultimate consumption, and any other activity incidental thereto, and "reticulate" and "reticulating" have corresponding meanings;

"**service**" means any service related to the transmission, distribution, storage or trading of gas;

"**storage company**" means a person storing gas;

"**tariff**" means a written statement of rates and terms and conditions under which gas or gas services are sold to any customer;

"**trading**" means the sale of gas as a commodity by any person and any services and conditions associated therewith;

"**transmission**" means the bulk transportation of a class of gas supplied from a source of supply to a distributor, reticulator, storage company or eligible customer, and any other activity incidental thereto, and "transmit" and "transmitting" have corresponding meanings;

"**transmission company**" means a person transmitting gas;

"**this Act**" includes the regulations promulgated and directives issued thereunder; and

"**uncommitted capacity**" means that capacity determined by the Gas Regulator in a transmission, storage or distribution facility that is not required to meet contractual obligations.

### **Objectives of Act.**

2. The objectives of this Act are to -
  - a. promote the efficient, effective, sustainable and orderly development and operation of gas transmission, storage and distribution facilities and the provision of 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 firms in the gas industry that are owned or controlled by historically disadvantaged South Africans 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 present and future customers of gas are met;
  - f. promote the development of competitive markets for gas and gas services;
  - g. facilitate gas trade between the Republic of South Africa and other countries; and
  - h. establish the National Gas Regulator as the regulator of this framework.

## **CHAPTER II**

### **THE NATIONAL GAS REGULATOR**

#### **Establishment of the Gas Regulator.**

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

#### **Functions of the Gas Regulator.**

4. In pursuance of the objectives of this Act, the Gas Regulator must, in accordance with the provisions of this Act-
  - a. issue licenses for -

- i. the construction of gas transmission, storage and distribution facilities;
  - ii. the operation of gas transmission, storage and distribution facilities; and
  - iii. the trading of gas;
- b. gather information relating to the production, transmission, storage, distribution and trading of gas;
- c. issue directives in terms of subsection 21(b);
- d. undertake investigations and inquiries into the activities of licensees;
- e. interact with Government Departments and other bodies and institutions;
- f. interact with Government Departments and gas regulatory authorities of other countries to promote and facilitate the construction, development and functioning of gas transmission, storage and distribution facilities and services;
- g. approve tariffs and charges to gas distributors and consumers who do not have a choice of suppliers, having regard to both the interests of consumers and the needs of licensees;
- h. monitor and approve transmission and storage tariffs and charges and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner;
- i. approve the expropriation of land required for the performance of a licensee's functions and determine conditions of such expropriation;
- j. promote competition in the gas industry;
- k. promote the optimal use of available resources;
- l. make decisions that are not at variance with Government policy
- m. perform any activity incidental to the performance of its functions; and
- n. exercise any power or perform any duty or function assigned to it under an Act of Parliament or conferred upon it by a ratified international agreement.

#### **Constitution of the Gas Regulator.**

5. (1) The Gas Regulator consists of a minimum of three and a maximum 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 for any reason the Minister may appoint another person in his or her place for the remainder of the term of office of the Gas Regulator.
  - (5) A member of the Gas Regulator shall be paid for his or her services such remuneration and allowances as the Gas Regulator may determine with the approval of Minister and granted with the concurrence of the Minister of Finance
  - (6) No person may be appointed as a member of the Gas Regulator if -
    - a. he or she is not a South African citizen resident in the Republic of South Africa;
    - b. he or she is an unrehabilitated insolvent;
    - c. he or she has been convicted of an offense involving an element of dishonesty;
    - d. he or she is in the employ of, or holding any relation to, any person, firm, association or company engaged in the exploration, production, transmission, storage, distribution or trading of gas, or has any pecuniary interest therein;
    - e. he or she is in the employ of, or affiliated to, any division of national, provincial or local government; and
    - f. he or she has any other conflict of interest in this regard.

(7) All members must disclose their personal, professional and business interests on appointment to the Gas Regulator and notify the Minister when these change.

(8) A member of the Gas Regulator shall vacate his or her office if -

- a. he or she becomes of unsound mind;
- b. he or she has been absent from more than two consecutive meetings without leave of the chairperson for each absence;
- c. he or she resigns and has notified the chairperson in writing of his or her resignation, or in the case of the chairperson, the Minister;
- d. he or she materially transgresses any duty imposed on him or her under this Act; or
- e. he or she ceases to fulfill the requirements stipulated in subsection (6) (a) to (f).

#### **Appointment of members to the Gas Regulator.**

6. The Minister must appoint members to the Gas Regulator -

- a. who have adequate legal, technical, business or other experience relevant to the transmission, storage, distribution or trading of gas; and
- b. who are collectively representative of South African society as a whole; and
- c. who are committed and available to fulfill their role as Gas Regulator members; and
- d. who demonstrate impartiality and objectivity; and
- e. in such a manner that a fair balance between continuity and capacity building is achieved.

#### **Meetings of the Gas Regulator.**

7. (1) The members of the Gas Regulator shall meet at such times and places as may be determined by the chairperson and as required for the proper performance of its functions.

(2) The chairperson must, 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.

(3) The procedures to be followed at meetings shall be prescribed

(4) Until the procedures are prescribed, the Chairperson of any meeting must determine the procedures to be followed at such meeting.

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

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

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

(7) No decision nor act authorised by the Gas Regulator is invalid merely because:

- a. of a vacancy on the Gas Regulator; or
- b. any person not entitled to sit as a member sat at such meeting at the time the resolution was taken;

provided that the decision or act was authorised by a quorum constituted by the rest of the members present at the meeting and entitled to sit as members at the meeting.

(8) (a) The Gas Regulator may open its meetings to the public unless confidential, proprietary or commercially sensitive information is tabled for discussion, in which case an affected person must indicate why such information should not be disclosed to the public and the reasons are acceptable to the Gas Regulator.

- b. If the Gas Regulator makes a decision in any other manner than at a formal meeting such decision comes into effect immediately but must be reduced to writing and submitted for noting

at the first formal meeting of the Gas Regulator following such decision.

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

#### **Duties of members of the Gas Regulator**

8. Members of the Gas Regulator must-

- a. exercise all powers and perform all functions and duties required from them under this Act;
- b. act in a justifiable and transparent manner whenever the exercise of their discretion is required;
- 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
- f. act in a manner that is required and expected from the holder of a public office.

#### **Decisions of the Gas Regulator.**

9. (1) Any decision of the Gas Regulator must be-

- a. consistent with the Constitution of the Republic of South Africa and this Act;
- b. within the powers of the Licensing Authority, as set out in this Act;
- c. 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;
- d. based on facts and evidence that shall be recorded with the decision;
- e. reasonable;
- f. in writing; and
- g. explained clearly and thoroughly as to its factual and legal bases and the reasons therefor.

(2) Any person affected by a decision of the Gas Regulator must have access to a copy of such decision and the reasons therefor.

(3) Any person adversely affected by a decision of the Gas Regulator may appeal against the decision to the High Court.

#### **Personnel of the Gas Regulator.**

10. (1) The Gas Regulator must, subject to the provisions of subsection (3), appoint a chief executive officer of the Gas Regulator.

(2) The chief executive officer -

- a. is responsible for -
  - i. the management of the affairs of the Gas Regulator, subject to the directions of the Gas Regulator; and
  - ii. administrative control over the employees appointed under paragraph (b);
- b. may, subject to paragraph (c) and on such conditions as the Gas Regulator may determine in consultation with the Minister, appoint the employees or contract with any person to supply such services as may be necessary to perform the work connected with the powers, functions and duties of the Gas Regulator;
- c. must pay employees such remuneration, allowances, subsidies and other benefits in accordance with a remuneration structure as may be determined from time to time in consultation with the Gas Regulator and approved by the Minister, granted in consultation with the Minister of Finance;

(3) The Minister may designate an officer of another licensing or regulatory authority falling under his or her jurisdiction to exercise the powers and perform the functions and duties of the chief executive

officer under this Act.

### **Funding of the Gas Regulator.**

11. (1) The funds of the Gas Regulator will consist of -

- a. appropriations from the National Revenue Fund; and
- b. levies imposed under subsection (2).

(2) The Minister may, on receipt of the business plan and statement of the estimated income and expenditure of the Gas Regulator referred to in subsection (5)(b), by notice in the Gazette prescribe levies that are payable by licensees.

(3) Levies referred to in subsection (2) -

- a. may only be imposed -
  - i. after the business plan and statement of the estimated income and expenditure of the Gas Regulator submitted in terms of subsection (5)(b) have been made available for inspection to any interested party;
  - ii. after the amount and composition of the levy and motivation therefor, based on the said business plan, have been published for comment in the Gazette and any resulting comment has been considered;
  - iii. after the said business plan and statement have been approved by the Minister;
- b. are only valid for the period specified in the notice referred to in subsection (2);
- c. are payable in respect of the gas sold to customers and calculated in a manner set out in the notice, referred to in subsection (2)
- d. are payable at the times and in the installments set out in the notice referred to in subsection (2); and
- e. bear interest, in the case of non-payment or late payment, at a rate set out in the notice referred to in subsection (2).

(4) The Gas Regulator -

- a. must utilise its funds to defray expenses in connection with the exercise of its powers and the performance of its duties and functions; and
- b. may make provision for retirement funding for its employees.

(5) The Gas Regulator -

- a. may direct the chief executive officer to invest any unspent portion of the funds of the Gas Regulator in a fixed deposit or call account with a recognised financial institution, subject to any surplus and interest at the end of a financial year being carried over to the next financial year to be utilised to defray expenses incurred by the Gas Regulator during that financial year;
- b. must during each financial year, at least three months prior to the ensuing financial year, submit a business plan and statement of Gas Regulator's estimated cash-flow and income and expenditure for that financial year to the Minister for his or her approval, granted with the concurrence of the Minister of Finance.

### **Accounting by the Gas Regulator.**

12. (1) The chief executive officer is the accounting officer of the Gas Regulator and must -

- a. cause an account or accounts to be opened in the name of the Gas Regulator with a recognised financial institution and deposit therein all moneys received in terms of section 11(1);
- b. cause proper records to be kept of all financial transactions, assets and liabilities of the Gas Regulator and report regularly thereon to the Gas Regulator; and

- c. as soon as possible after the end of each financial year, cause a statement of the cash-flow and income and expenditure of the Gas Regulator for that financial year and a balance sheet of its assets and liabilities as at the end of that financial year to be prepared.

(2) The records, statements and balance sheet referred to in subsection (1) must be audited by the Auditor-General.

(3) The financial year of the Gas Regulator is the period ending on 31 March in each year.

#### **Reporting by the Gas Regulator.**

13. (1) The Gas Regulator must report in accordance with the Public Finance Management Act, 1999 (Act 1 of 1999)

(2) The Gas Regulator must publish an annual report that includes -

- a. an audited balance sheet and statement of cash-flow and income and expenditure, including any notes thereon and documents annexed thereto whereby relevant information is provided;
- b. information regarding licenses granted, amended or withdrawn;
- c. information regarding regulations made and directives issued;
- d. the envisaged strategies of the Gas Regulator;
- e. the status and envisaged commercial developments with respect to the transmission, storage, distribution and trading of gas; and
- f. such other information as the Gas Regulator may from time to time deem necessary.

### **CHAPTER III**

#### **GAS LICENSES AND REGISTRATION**

##### **Activities requiring a license.**

14. (1) No person may be engaged in or be involved in any manner in -

- a. the construction of gas transmission, storage or distribution facilities;
- b. the operation of gas transmission, storage or distribution facilities; or
- c. the trading of gas,

without a license issued by the Gas Regulator.

(2) Notwithstanding the provisions of subsection (1), a person engaged in an activity specified in the Schedule A shall not be required to apply for or hold a license to engage in such activity.

(3) The Gas Regulator may-

- a. determine whether any person is engaged in the construction or operation of gas transmission, storage or distribution facilities or trading in gas; and
- b. direct any person not holding a license, and who is obliged to apply for and hold a license under this Act, to cease to be engaged in the construction or operation of gas transmission, storage or distribution facilities or trading in gas.

(4) The Minister may amend the Schedule A by notice in the Gazette, after -

- a. publishing in the Gazette proposed amendments to Schedule A, for written public comment, and after considering such comments;
- b. consulting the Gas Regulator.

##### **Application for license.**

15. (1) Any person obliged to hold a license under this Act must apply to the Gas Regulator for a license to -

- a. construct gas transmission, storage or distribution facilities;
- b. operate gas transmission, storage or distribution facilities; or
- c. trade in gas.

(2) The procedure to be followed in applying for a license must be prescribed.

(3) A license application under subsection (1) must include -

- a. a description of the applicant including relationships with other persons engaged in the construction or operation of gas production, transmission, storage or distribution facilities or the trading of gas;
- b. documents establishing the administrative, financial and technical abilities of the applicant.
- c. a description of the proposed facility to be constructed or operated or the proposed trading to be conducted, including maps and diagrams where appropriate;
- d. a description of the customers to be served and the tariff policies to be applied;
- e. the plans and ability of the applicant to comply with all applicable health, safety and environmental legislation and subordinate legislation as prescribed; and
- f. such other particulars as may be prescribed..

### **Consideration and issuing of licenses by the Gas Regulator.**

16. (1) On receipt of an application for a license under this Act, the Gas Regulator -

- a. may request such additional information as may be necessary to enable the Gas Regulator to properly consider the application;
- b. must notify the applicant prior to considering an application if the Gas Regulator has reason to believe that the proposed construction of gas facilities or the proposed provision of gas services should be amended in order to provide access to third parties or to comply with applicable health, safety or environmental legislation or sub-ordinate legislation, for the purpose of discussing such amendments.

(2) (a) The Gas Regulator must -

- i. direct the applicant to publish a notice of the application in appropriate newspapers within such period and containing such particulars as may be prescribed;
- ii. consider all objections thereto within the period and in the manner prescribed.

b. An objection under paragraph (a) must -

- i. be submitted to the Gas Regulator within the period prescribed;
- ii. include all information necessary to substantiate the objection; and
- iii. be furnished by the Gas Regulator to the applicant for his or her response in the manner and within the period prescribed.

(3) The Gas Regulator must decide on an application in the manner and within the period prescribed. The applicant will be provided with a copy of its decision thereon.

(4) Separate licenses must be issued for -

- a. the construction of gas transmission, storage or distribution facilities;
- b. the operation of gas transmission, storage or distribution facilities;
- c. the trading of gas by a transmission company, storage company or distribution company.

(5) (a) Any person owning or operating gas facilities or trading in gas prior to the effective date of this Act must, within a period prescribed, submit to the Gas Regulator an application for a license under this Act.

- b. The Gas Regulator must grant such license unless it finds that the applicant is unable to own or operate gas facilities or to trade in gas consistent with the objectives and provisions of this Act.

(6) Nothing in this Act precludes any person from discussing the contemplated construction of gas facilities, the operation thereof or the envisaged trading in gas with the Gas Regulator prior to filing a license application, and the Gas Regulator must furnish such applicant with all information that may facilitate the filing of an application.

(7) The Minister may, after consultation with the Gas Regulator, stipulate that a licence be issued to a state controlled entity that shall be responsible for the establishment and operation of specified gas transmission pipelines.

### **Conditions of License.**

17. (1) The Gas Regulator may impose license conditions, within the following framework of requirements and limitations as appropriate;

- a. There must be no limitations on ownership of vertically integrated companies;
- b. the gas transmission, storage, distribution and trading activities of vertically integrated companies must be managed separately with separate accounts with no cross-subsidisation;
- c. non-discriminatory third party access to uncommitted capacity in transmission pipelines as prescribed;
- d. interested parties may negotiate changes with transmission companies in the routing, size and capacity of proposed pipelines;
- e. interested parties may negotiate with transmission companies for increases in compression of existing transmission pipelines and all pipeline customers must benefit pro rata from the reduced costs resulting from the increased volume;
- f. transmission companies must not be obliged to incur any additional expenditure to provide the changes referred to in subsections (d) and (e) but the interested parties' expenses for these changes must be taken into account when setting their tariffs;
- g. licensees must allow interconnections with the facilities of producers, transmitters, storage companies, distributors and eligible customers, provided that the interconnection is technically feasible;
- h. non-discriminatory pricing and conditions for transmission;
- i. there must be mandatory non-discriminatory third party access to uncommitted capacity in storage facilities as prescribed;
- j. interested parties may negotiate with storage companies for changes in the capacity of storage facilities;
- k. storage companies must not be obliged to incur any additional expenditure to provide the changes referred to in subsection (j) but the interested parties' expenses for these changes must be taken into account when setting their tariffs;
- l. there must be non-discriminatory pricing and conditions for storage;
- m. distributors must be granted exclusive geographic areas for a class of gas, excluding direct sales via physical by-passes to eligible customers;
- 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;
- o. gas must be supplied to any person in an exclusive geographic area on request, provided such service is economically viable;
- p. there must be non-discriminatory pricing and conditions for distribution;

- q. tariffs for consumers that do not have a choice of suppliers must be submitted to the Gas Regulator for approval; and
- r. a gas advisory service must be provided to customers other than eligible customers, by the trading licensee.

(2) The Gas Regulator must at the request of any of the parties act as arbitrator in any dispute arising from the provisions of subsection 17(1) and its decision is binding;

(3) The Gas Regulator shall be bound by decisions made by the Minister prior to the promulgation of this Act in terms of the Abolition of the National Energy Council Act No 95 of 1991 and as specified in Schedule B. The Minister may amend Schedule B by notice in the Gazette.

#### **Term of License.**

18. (1) Any license issued under this Act is valid for a period determined by the Gas Regulator.

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

#### **Amendment of License.**

19. (1) The Gas Regulator may vary, suspend or remove any of the license conditions, or may include additional conditions-

- a. On application or with permission of the licensee;
- b. Upon non-compliance by a licensee with a license condition; and
- c. If it is deemed necessary for the purposes of this Act.

(2) Licences must, wherever practical, give the Gas Regulator at least 12 months notice in writing of their intention to substantially alter their activities.

#### **Revocation of License.**

20. (1) The Gas Regulator may revoke a license -

- a. on application of a licensee if -
  - i. (i) the licensed facility or activity is no longer required;
  - ii. (ii) the licensed facility or activity is not economically justifiable; or
  - iii. (iii) 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 license is issued to such a person.
- b. upon continued willful and material non-compliance with a notice issued under section 21.

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

(3) Licensee must comply with current health, safety and environmental legislation when abandoning facilities.

(4) The procedure to be followed in revoking a license under subsection (1) must be prescribed.

#### **Violations of License.**

21. If a licensee violates a condition of the license or the provisions of this Act the Gas Regulator may -

- a. serve on such licensee a notice in writing of such failure or violation;
- b. direct the licensee to comply with such license within a reasonable period specified in the notice;
- c. upon non-compliance with such notice impose such penalties as may be prescribed;

d. upon continued willful and material non-compliance with such notice, revoke such license.

#### **Registration with the Gas Regulator.**

22. (1) Any operation involving the production, importation, transmission, storage, distribution and trading of gas and which is not required to be licensed under this Act must be registered with the Gas Regulator by its owner.
- (2) Registered operations will provide the Gas Regulator with such information concerning their activities related to gas as prescribed.
- (3) Registration under subsection (1) shall be submitted in the form prescribed .

### **CHAPTER IV**

#### **GENERAL PROVISIONS**

#### **Entry, inspection and information gathering by the Gas Regulator.**

23. (1) For the purposes of this Act, the Gas Regulator or any person authorised thereto in writing by it, 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
  - b. require any person to furnish the Gas Regulator with information in such form as may be prescribed.
- (2) The Gas Regulator may require that the accuracy of any information, return or particular furnished under subsection (1) be verified on oath.
- (3) A person authorised by the Gas Regulator under subsection (1) must on request show his authorisation to any person requesting it.
- (4) No information obtained under subsection (1) which is of a non-generic, confidential, personal, commercially sensitive or proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates, or an order of the High Court.

#### **Voluntary resolution of disputes by the Gas Regulator.**

24. (1) The Gas Regulator may, with the approval of both parties to a dispute, act as mediator or arbitrator in any matter concerning the trading of gas and the rendering of services.
- (2) The Gas Regulator may, on request and with the approval of the parties involved, appoint a suitable person to act as mediator or arbitrator on its behalf and any act or decision of a person so appointed is deemed to be an act or decision of the Gas Regulator.
- (3) The procedure to be followed and arbitration fees to be paid in arbitrating a dispute and the decision of the Gas Regulator, including a decision as to costs, is final and binding on the disputing parties.

#### **Investigations by the Gas Regulator.**

25. (1) The Gas Regulator may conduct investigations into -
- a. complaints by customers relating to the supply of gas; and
  - b. complaints by any person concerning unreasonable differences in the supply of gas or gas services by licensees or unreasonable differences in the price, rates, charges or terms and conditions of such supply.
- (2) Notwithstanding the provisions of subsection (1) and subject to the obligations of a licensee under his or her license, the Gas Regulator may not conduct investigations into disputes concerning breach of contract between a licensee and a eligible customer.

(3) A complaint under subsection (1) must be submitted within the period and in the manner prescribed and be accompanied by -

- a. supporting information; and
- b. a description of efforts made to resolve the dispute without resorting to the Gas Regulator.

#### **Expropriation of land by the Gas Regulator.**

26. (1) Notwithstanding anything to the contrary contained in any law a licensee may, with the approval of the Gas Regulator and on such conditions as the Gas Regulator may determine, by expropriation acquire land or any right in, over or in respect of such land as the licensee may require for the performance of its functions.

(2) An acquisition under subsection (1) may only take place if the Gas Regulator is satisfied -

- a. that the licensee concerned is unable to acquire such land or right on reasonable terms, other than terms relating to compensation, by agreement with the owner; and
- b. that the land or right is reasonably required by that licensee for the performance of his or her functions.

(3) A decision by the Gas Regulator under subsection (2) must be reached in the manner and within the time prescribed and compensation payable to the owner must be determined in accordance with the provisions of the Expropriation Act, 1975 (Act No. 63 of 1975).

(4) Upon the Gas Regulator being satisfied that such acquisition should be granted, the provisions of sections 7 to 23 of the Expropriation Act, 1975 (Act No. 63 of 1975) shall apply mutatis mutandis in connection therewith and any reference to the Minister or the State must be construed as a reference to the Gas Regulator.

(5) Upon receiving approval under subsection (4) of an acquisition being granted, the licensee concerned may take possession of such land or exercise the rights concerned pending determination of compensation.

#### **Rights of licensee.**

27. (1) 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 in order to inspect, repair, replace or alter any pipe, meter, fitting, work and apparatus belonging to such licensee or for the purpose of ascertaining the quantity of gas consumed, or where a supply is no longer required, for the purpose of removing any pipe, meter, fitting, work and apparatus belonging to such licensee.

(2) Any person entering a premise under subsection (1) must -

- a. except in cases of emergency, arrange 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 authorisation at the request of such occupant or owner.

(3) A licensee may break up any street within its licensed area of supply and 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, and be responsible for the restoration.

(4) (a) A licensee must, before exercising a power conferred under subsection (3), consult and coordinate with the authority in whose area of jurisdiction the street concerned is situated, except in cases of emergency.

b. A licensee must exercise a power conferred on him or her under subsection (3) -

- i. in accordance with a route and in terms of specifications approved by the authority concerned; and
- ii. except in cases of emergency, under the supervision of the authority concerned.

(5) 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 his possession remain the property of and may be removed by such licensee.

### **Promulgation of regulations.**

28. The Minister, after consultation with the Gas Regulator, by notice in the Gazette may make regulations regarding:

- a. the procedures to be followed at meetings of the Gas Regulator;
- b. the keeping of records by the Gas Regulator;
- c. ensuring fair administrative action by the Gas Regulator;
- d. the form, and manner and contents of license applications;
- e. the publishing of license applications and the contents thereof;
- f. the form and manner and time within which objections to license applications must be lodged and the furnishing thereof to the applicant for his or her response thereto;
- g. licensing of gas activities as specified in Article 14 taking place at the time this Act comes into operation;
- h. the procedure to be followed in considering license applications;
- i. the incorporation of health, safety and environmental legislation and sub-ordinate legislation by referral;
- j. the timing, setting of qualifying thresholds and other matters relating to the direct sales of gas from producers to eligible customers;
- k. the publishing of information relating to uncommitted capacity by the holders of transmission or storage licenses and the publishing of tariffs for gas supplied to customers other than eligible customers by the holders of distribution licenses;
- l. the rehabilitation of land used in connection with the transmission, storage or distribution of gas or the trading therein, the provision of security for rehabilitation purposes and the composition and amount of such security;
- m. the determination of classes of gas;
- n. the procedure to be followed in the revocation of a license;
- o. monetary penalties payable for the non-compliance with or violation of this Act, regulations or a license;
- p. the form in which registration must be lodged;
- q. the procedure to be followed and fees to be paid in mediation and arbitration proceedings;
- r. the procedures to be followed in investigations, including the summoning of witnesses;
- s. the procedure to be followed at and the time within which expropriation proceedings should be conducted;
- t. the inspection of and enquiry into the construction, and operation of any gas facility or the trading of gas;
- u. the rendering of information; and
- v. price approval procedures and principles; and
- w. any other matter that may or has to be prescribed, determined or provided for in this Act.

### **Interpretation.**

29. (1) No agreement may contravene any -

- a. provision of this Act;
- b. license granted by the Gas Regulator;
- c. condition attached to a license granted by the Gas Regulator;
- d. regulation or directive issued under this Act.

(2) Any license, licensing condition, regulation or directive issued in good faith in terms of this Act is valid according to its terms, despite any want of form or lack of power on the part of the Gas Regulator or any person to issue or authenticate it, provided the necessary power is subsequently conferred or delegated upon the Gas Regulator or person concerned.

"(3) This Act shall be interpreted within the framework laid down by the Constitution of the Republic of South Africa and the prerogative of the national Government to establish national norms and

standards relating to the transmission, storage and distribution of gas, and in particular –

- a. the exercise of any power, duty or function in terms of this Act shall be done with due regard to the provisions of any other legislation originating from national level impacting on or influencing the exercise of that power, duty or function: Provided that where there is a clash between this Act and such other legislation, this Act will have preference in so far as it relates to the transmission, storage and distribution of gas; and
- b. the provisions of any provincial legislation or municipal by-laws or the exercise of any power, duty or function in terms thereof dealing with or impacting on the transmission, storage and distribution of gas shall be subject to the provisions of this Act and the exercise of any power, duty or function in terms thereof.

**Title and commencement.**

30. This Act is called the Gas Act, 2000, and comes into operation on a date fixed by the President by proclamation in the Gazette.

**SCHEDULE A**

**EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENSE**

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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"><li>1. Any person engaged in the transmission or storage of gas for that person's exclusive use.</li><li>2. Small biogas projects in rural communities not connected to the national grid, as determined by the Gas Regulator.</li></ol> |
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**SCHEDULE B**

**DECISIONS MADE BY THE MINISTER PRIOR TO THE PROMUGATION OF THIS ACT**

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