

**REPUBLIC OF SOUTH AFRICA**

**GAS AMENDMENT BILL**

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

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**(MINISTER OF MINERALS RESOURCES AND ENERGY)**

**[B—2021]**

**GENERAL EXPLANATORY NOTE:**

[                      ]      Words in bold type in square brackets indicate omissions from existing enactments.  
 \_\_\_\_\_      Words underlined with a solid line indicate insertions in existing enactments.

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**BILL**

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

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

**Amendment of section 1 of Act 48 of 2001, as amended by section 15 of Act 40 of 2004**

1. Section 1 of the Gas Act, 2001 (Act No. 48 of 2001)(hereinafter referred to as the "principal Act"), is hereby amended—

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

" **'applicant'** means a person who has submitted or intends to submit an application for any activity listed in section 15;

**'associate company'** means a company which is a subsidiary in the same group of companies as an applicant for a licence in terms of this Act;

**'BBBEE Act'** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

**'black people'** has the meaning assigned to it in the BBBEE Act;"

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

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

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

**'Constitution'** means the Constitution of the Republic of South Africa, 1996;

**'Co-operatives Act'** means the Co-operatives Act, 2005 (Act No.14 of 2005);"

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

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

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

" **'day'** means any day other than a Saturday, Sunday or public holiday and, for the purposes of calculating any period relating to licensing, the period between 16 December and 15 January (both dates inclusive) must not be taken into account;"

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

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

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

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

- (h) by the substitution for the definition of "distribution company" of the following definition:

" **'distribution company'** means any person **[distributing gas]**  
licensed to operate a gas distribution facility under section 19;";

- (i) by the substitution for the definition of "eligible customer" of the following definition:

" **'eligible customer'** means a **[customer]** consumer who **[in the prescribed manner may buy gas directly from suppliers without the intervention of a distribution company]** meets the qualifying threshold determined by the Minister;";

- (j) by the insertion after the definition of "eligible customer" of the following definitions:

" **'end consumer'** means a person purchasing gas for their own  
consumption;

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

**'Expropriation Act'** means the Expropriation Act, 1975 (Act No. 63 of  
1975);

**'facility'** means all the necessary and incidental infrastructure  
associated with the activity as defined for each of transmission,  
storage, distribution, liquefaction or re-gasification;";

- (k) by the substitution for the definition of "gas" of the following definition:

" **'gas'** means all hydrocarbon gases **[transported by pipeline ]**,  
including natural gas, artificial gas, hydrogen rich gas, methane rich  
gas, synthetic gas, coal bed methane gas, liquefied natural gas,

compressed natural gas, re-gasified liquefied natural gas, re-gasified  
liquefied petroleum gas or any combination thereof;"

(l) by the insertion after the definition of "**Gas**" of the following definition:

" **'gas master plan'** means an indicative, forward-looking plan for gas supply and demand, compiled in accordance with the provisions of section 28A in order to reflect national policy on gas infrastructure planning, which considers the sources from which gas is, and may be, supplied, and also considers the development, strengthening, upgrading and refurbishment of the gas transmission network and the linkages between this system and any relevant facilities for the import or export of gas necessary to supply the anticipated demand;"

(m) by the deletion of the definition of "Gas Regulator";

(n) by the insertion after the definition of "Gas Regulator" of the following definitions:

" **'group of companies'** has the meaning assigned to it in the Companies Act, 2008 (Act No. 71 of 2008);

**'infrastructure or market development plan'** means the plan that must be prepared by a distributor or trader, respectively, in respect of the area for which exclusivity is sought or granted in terms of section 22A;

**'integrated energy project'** means a project provided for under a determination made by the Minister in terms of section 28B(7);

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

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

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

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

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

" **'Mineral and Petroleum Resources Development Act'** means the Mineral and Petroleum Resources Development Act , 2002 (Act No. 28 of 2002);

(r) by the deletion of the definition of "mine";

(s) by the substitution for the definition of "Minister" of the following definition:

" **'Minister'** means the Minister **[of minerals and Energy]** responsible for energy;";

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

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

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

" **'port'** has the meaning assigned to it in section 1 of the National Ports Act, 2005 (Act No. 12 of 2005);";

(v) by the substitution of the definition of "prescribed" of the following definition:

" **'prescribed'** means prescribed by regulation or by rules in terms of this Act;";

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

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

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

" **'private sector party'** means any natural or juristic person in which the Government or an organ of state does not hold a controlling ownership interest (whether direct or indirect);"

- (y) by the deletion of the definition of "production";
- (z) by the insertion after the definition of "production" of the following definitions:

" **'production area'** has the meaning ascribed to it in the Mineral and Petroleum Resources Development Act;

**'production operation'** has the meaning ascribed to it in the Mineral and Petroleum Resources Development Act;

**'production right'** has the meaning ascribed to it in the Mineral and Petroleum Resources Development Act;

'Promotion of Access to Information Act' means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

**'Promotion of Administrative Justice Act'** means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);"

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

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

- (ZB) by the substitution for the definition of "regulation" of the following definition:

" **'regulation'** means a regulation made by the Minister **[under]** in terms of section 34(1);"

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

" **'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]** or by pipelines with such other operating pressure as the Energy Regulator may permit, by a municipality to end consumers, (excluding eligible customers), and any other activity incidental thereto, and **"reticulate"**, **[and]** **"reticulating"** and **"reticulator"** have corresponding meanings;"

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

" **'rule'** means **[by]** a rule made by the Energy Regulator **[under]** in terms of section 34(3);" ;

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

" **'service'** means any service provided by a licensee to a third party, including a company in the same group of companies, relating to the transmission, distribution, storage, **[trading,]** liquefaction or re-gasification of gas;" ;

(zF) by the substitution for the definition of "specification" of the following definition:

" **'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]**;" ;

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

" **'storage'** means the holding of gas **[as a service]** in fixed infrastructure and any other activity incidental thereto, but excludes the

storage of gas **[in pipelines which are used primarily for the transmission and distribution of gas]—**

(i) for own use;

(ii) at a transmission, distribution, liquefaction or upstream pipeline;

or

(iii) where the primary purpose of such storage is for gas to be used in a production operation, or in the manufacture of synthetic or artificial gas;"

(zH) by the deletion of the definition of "storage company";

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

" **'tariff'** means the monetary charge for providing gas services to any customer;"

(zJ) by the substitution for the definition of "this Act" of the following definition:

" **'this Act'** includes the regulations, rules and determinations made under this Act;"

(zK) by the insertion after the definition of "this Act" of the following definition:

" **'trader'** means any person licensed to trade gas under section 19;"

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

" **'trading'** means the sale of gas—

(a) to a reticulator;"

(b) to an end consumer; and

(c) by a transmission company or a distribution company, and any activity incidental thereto, including the construction and operation of trading infrastructure, but excluding the construction and operation of liquefaction, re-gasification, transmission,

storage and distribution facilities, and **"trade"** or **"trader"** have corresponding meanings;";

(zM) by the insertion after the definition of "trading" of the following definitions:

" **'trading infrastructure'** includes all fixed and mobile infrastructure used in non-pipeline delivery of gas to ultimate points of consumption, including compression infrastructure and mobile storage units, but excluding liquefaction, re-gasification, transmission, storage and distribution facilities;";

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

" **'transmission'** means transport of gas by pipeline (other than in an upstream pipeline), at a general operating pressure of 15 bar gauge or more by pipelines with such other operating pressure as the Energy Regulator may permit, and **"transmit"** and **"transmitting"** have corresponding meanings;";

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

" **'transmission company'** means any person **[transmitting gas]** licensed to operate a gas transmission facility under section 19;";

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

" **'uncommitted capacity'** means such capacity as determined in accordance with a methodology prescribed by the **[Gas]** Energy Regulator in a liquefaction, re-gasification, transmission, storage or

distribution facility, as is not required to meet contractual obligations[.];" and

(zQ) by the insertion after the definition of "uncommitted capacity" of the following definition:

**" 'upstream pipeline' means a pipeline or one of a network of pipelines—**

**(i) which is operated or constructed as part of operations carried out under a production right; or**

**(ii) which is used to convey gas from a production area directly or indirectly to an upstream gas processing facility."**

## **Amendment of section 2 of Act 48 of 2001**

**2.** Section 2 of the principal Act is hereby amended—

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

**"(a) promote the efficient, effective, sustainable and orderly development of the construction and operation of gas transmission, storage, distribution, liquefaction and regasification facilities **[and the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction, re-gasification and trading services]**;"**

(b) by the insertion after paragraph (a) of the following paragraphs:

"(aA) promote the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction and re-gasification services;

(aB) promote competitive and sustainable trade in gas;";

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

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

(d) by the insertion after paragraph (c) of the following paragraphs:

"(cA) facilitate the development of integrated energy projects, including gas-to-power projects;

(cB) facilitate the development of gas markets and gas facilities;";

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

"(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]** black people in accordance with the BBBEE Act and gas sector specific requirements;

(e) **[ensure that]** promote the equitable provision of 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]** in the public interest;

- (f) promote skills **[among employees]** development and employment equity in the gas industry;";
- (f) by the deletion of paragraphs (g) and (h); and
- (g) by the addition of the following subsection, the existing section becoming subsection (1):

"(2) The Energy Regulator must, in carrying out its functions set out in section 4, have regard to the objects set out in subsection (1).".

### **Substitution of heading of Chapter II of Act 48 of 2001**

3. The following heading is hereby substituted for the heading of Chapter II of the principal Act:

**"[NATIONAL] GAS [REGULATOR] REGULATION".**

### **Substitution of section 4 of Act 48 of 2001**

4. The following section is hereby substituted for section 4 of the principal Act:

#### **"Functions of Energy Regulator**

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

- (a) consider applications for licences in respect of the activities regulated by this Act and may issue licences for—
  - (i) the construction or conversion of a facility referred to in section 15(1)(a);
  - (ii) the operation of a facility referred to in section 15(1)(b); and
  - (iii) trading in gas;
- (b) impose licence conditions in accordance with section 21(1) or 21(1A) and review these in accordance with section 21(2);
- (c) regulate third party access to gas facilities in accordance with the principles prescribed by regulation;
- (d) consider and decide on applications for exclusivity in accordance with the principles prescribed by the Minister;
- (e) regulate, facilitate and promote participation in the gas industry in accordance with Government policy and plans, and ensure adherence by licensees, persons contemplated in section 15(3), and persons contemplated in section 15B, with their statutory obligations under this Act;
- (f) integrate decision-making in respect of integrated energy projects where the Energy Regulator is also empowered in terms of section 4 of the National Energy Regulator Act, to take decisions in terms of other energy legislation;
- (g) gather information relating to the transmission, storage, distribution, trading, liquefaction and re-gasification of gas and, subject to section 29A, publish or make available such information;

- (h) issue compliance notices and, if necessary, take remedial action in terms of sections 26 and 27;
- (i) receive complaints, undertake investigations, inspections and inquiries into the activities of licensees and activities that are required to be licenced or are regulated by this Act, and take appropriate action;
- (j) consult with Government departments and other relevant bodies and institutions regarding any matter contemplated in this Act;
- (k) if necessary to achieve one or more of the objects set out in section 2(1) of this Act, enter into an agreement with any regulator, organ of state or Government department, in order to co-ordinate and harmonise the performance of functions similar to, or related to, those of the Energy Regulator, including, pursuant to section 28B(9), concluding an agreement referred to in that section;
- (l) consult with gas regulatory authorities of other countries to promote and facilitate the development of gas transmission, storage, distribution, liquefaction and re-gasification facilities and gas services in accordance with Government policy and plans;
- (m) regulate tariffs and prices in accordance with the requirements of section 22B;
- (n) ensure that prices and tariffs are applied without undue discrimination as contemplated in section 22;
- (o) provide all information and data requested by the Department or the Minister for the purposes of gas policy formulation, subject to section 29A;

- (p) in consultation with the Minister, expropriate land or any right in, or over, such land as is necessary for the performance of a licensee's functions in terms of section 32;
- (q) strengthen compliance with this Act through monitoring and enforcement;
- (r) take decisions that are in accordance with Government policy;
- (s) perform any activity incidental to the performance of its functions;
- (t) make rules in accordance with section 34(3); and
- (u) exercise any power or perform any duty conferred or imposed on it under this Act, the National Energy Regulator Act or any other applicable law."

### **Substitution of heading of Chapter III of Act 48 of 2001**

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

**"GAS [LICENCES] LICENSING AND REGISTRATION".**

### **Amendment of section 15 of Act 48 of 2001**

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

"No person may without a licence issued by the **[Gas] Energy**  
Regulator—"; and

- (b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:

"(a) construct—

- (i) gas transmission[, ] facility;
- (ii) a gas storage [, ] facility;
- (iii) a gas distribution[, ] facility;
- (iv) a gas liquefaction facility; **[and]** or
- (v) a re-gasification **[facilities]** facility.

or convert infrastructure into such **[facilities]** a facility;

(b) operate—

- (i) a gas transmission [, ] facility;
- (ii) a gas storage [, ] facility;
- (iii) a gas distribution[, ] facility;
- (v) a gas liquefaction facility; or
- (vi) a re-gasification **[facilities]** facility; or";

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

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

"The **[Gas]** Energy Regulator may, without prejudice to its powers under sections 26 and 34(3)—

- (e) by the deletion in subsection (3) of paragraph (a).

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

"(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 until such time as that

person has applied for and been granted the necessary licence."; and

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

"(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] Energy** Regulator prior to **[filing] lodging** a licence application nor from undertaking activities, including geotechnical studies, required for an impact assessment or feasibility study.

(b) The **[Gas] Energy** Regulator must, subject to section **[29(4)] 29A**, furnish a person contemplated in paragraph (a) with such information as may **[facilitate the filing of an application]** assist that person to decide whether to engage in the licensable activities contemplated in paragraph (a) and as may later facilitate the lodging of a licence application."

#### **Insertion of section 15A and section 15B in Act 48 of 2001**

7. The following sections are hereby inserted in the principal Act after section 15:

## "Activities not licensed

15A. The Minister may, after consultation with the Energy Regulator, declare, by notice in the *Gazette*, any activity contemplated in section 15(1) to be no longer a licensed activity from the date set out in such notice.

## Registration

15B. (1) A person undertaking any of the following activities must register with Energy Regulator:

- (a) The exportation or importation of gas;
- (b) an activity referred to in Schedule 1;
- (c) purchasing gas as an eligible customer; or
- (d) any other activity as may be prescribed by the Minister.

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

(3) Any application for registration in terms of subsection (1) must be submitted in the prescribed form and manner as prescribed by the Energy Regulator."

## Amendment of section 16 of Act 48 of 2001

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

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

**"[Application] Requirements for licence application";**

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

"(1) Any 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]** form and manner prescribed by the Energy Regulator, which may differentiate between different types of gas facilities and services.".

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

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

"(3) The applicant may, in accordance with the Promotion of Access to Information Act, request confidential treatment of commercially sensitive information contained in an application and, subject to concurrence by the **[Gas] Energy** Regulator, such information may be withheld from publicly available copies of the application."; and

- (e) by the addition of the following subsections:

"(4) If an applicant intends to undertake more than one of the activities set out in section 15(1) as part of the same development or project, the applicant may apply at the same time for a consolidated licence which authorises some or all of the regulated activities applicable to such development or project, and the Energy Regulator may, in such circumstances grant a consolidated licence pursuant to section 19(4) in respect of such development or project.

(5) The Energy Regulator must, subject to section 29A, furnish a person applying for a licence with such information as may facilitate the lodging of a licence application."

#### **Amendment of section 17 of Act 48 of 2001**

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

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

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

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

"(1) When an application is made for a licence as contemplated in section 16, the **[person] applicant [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]** the manner prescribed by Energy Regulator.";

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

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

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

(e) by the addition of the following subsection:

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

#### **Amendment of section 18 of Act 48 of 2001**

**10.** Section 18 of the principal Act is hereby amended—

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

**"Consideration of application by Energy Regulator"**;

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

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

(c) by the deletion of paragraph (a);

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

**"(b)** may direct the applicant to alter the plans for the proposed construction of gas facilities or the proposed **[provision of gas services] operation of a gas facility** in order to comply with applicable health, safety or environmental legislation;" and

(e) by the deletion of paragraphs (c) and (e); and

(f) by the insertion of the following subsections, the existing section becoming subsection (1):

**"(2) The Minister may, in writing, direct that when the Energy Regulator decides upon a licence application, the Energy Regulator must satisfy itself that such application meets, *inter alia*, any**

additional criteria specified by the Minister, which criteria must be based upon, and must reflect—

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

(3) If the Minister makes a direction in terms of subsection (2), the Energy Regulator must publish the criteria contemplated in section 19(2), if the criteria is applicable, and allow the applicant an opportunity to amend its application."

#### **Insertion of section 18A in Act 48 of 2001**

**11.** The following section is hereby inserted in the principal Act after section 18:

#### **"Objection to licence application**

**18A.** (1) Any person may object to a licence application contemplated in section 16 but must do so in the manner and within the period prescribed by the Energy Regulator.

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

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

### **Substitution of section 19 of Act 48 of 2001**

**12.** The following section is hereby substituted for section 19 of the principal Act:

#### **"Finalisation of application**

**19.** (1) The Energy Regulator must decide on an application contemplated in section 16 within 60 days—

(a) after the expiration of the prescribed objection period, if no objections have been received;

(b) after receiving and considering the objections and the response of the applicant to objections as contemplated in section 18A(3); or

(c) after receiving the additional information contemplated in section 18(d), if any, where this information is only received after the period contemplated in paragraph (a), and the response contemplated in paragraph (b), has been received, as the case may be.

(2) Without derogating from any other provisions of this Act, the Energy Regulator may issue a licence if it is satisfied that such a decision is not at variance with the objects of the Act and there is sufficient evidence that the applicant has the necessary organisational, financial and technical

abilities for the proper performance of the duties associated with the licence applied for.

(3) The Energy Regulator must provide the applicant with written reasons for its decision.

(4) If an applicant or an associate company holds a licence for the construction of a gas facility, the Energy Regulator may issue an operation licence for such gas facility and, if necessary, any associated trading licence, if the application meets the requirements for a valid application as prescribed by the Energy Regulator in terms of section 16 and the said application is made within five years of the date of issue of that construction licence, unless—

(a) the construction licence has been revoked; or

(b) the Energy Regulator is entitled to issue, or has issued, a compliance notice in respect of a failure of the licensee as contemplated in section 27(1)(d), which entitles the Energy Regulator to revoke the construction licence.

(5) If the Energy Regulator decides to issue a licence it may, as appropriate in the circumstances of each case, issue separate or consolidated licences in respect of the activities referred to in section 15(1)."

## **Repeal of section 20 of Act 48 of 2001**

**13.** Section 20 of the principal Act is hereby repealed.

## Amendment of section 21 of Act 48 of 2001

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

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

"The **[Gas]** Energy Regulator may **[impose]** make any licence subject to conditions within the following framework, [of requirements and limitations—] including such additional conditions as may be prescribed by the Minister:";

- (b) by the substitution in subsection (1) for paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) of the following paragraphs, respectively:

- "(a) **[a licence must]** A licensee's obligation to carry out the construction, operation or trading activities and to provide the operation and trading services for which the licence is granted, within a specified time period and for the term of the licence;
- (b) **[licensees must]** a licensee's obligation to provide information to the **[Gas]** Energy Regulator **[of]** about the **[commercial]** arrangements regarding **[the participation of historically disadvantaged South Africans]** broad-based black economic empowerment in the **[licensees' activities]** licensee's activity as may be prescribed by **[regulation]** the Minister and any other relevant legislation;
- (c) the separate management, with separate account and data, for 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 unless a consolidated licence is issued for a development or a project, in which case specific provisions must be included in the licence conditions regarding the management of accounts and data for each regulated activity, which may include dealing in one or more of these on an integrated basis;

- (d) third party access to uncommitted capacity in any gas facility and interconnection, where appropriate, in accordance with the principles prescribed by the Minister;
- (e) the maximum gas prices and tariffs regulated by the Energy Regulator for the licensee subject to adjustment at intervals in the manner prescribed for licensing, or subject to adjustment, by the Energy Regulator following a review at the request of licensee;
- (f) exclusivity for distributors where appropriate, in accordance with the requirements contemplated in section 22A;
- (g) transparency in pricing and the information to be provided to the Energy Regulator and customers in this regard;
- (h) construction and operation of gas facilities to conform to any applicable norms and standards stipulated in the licence, or published by the Energy Regulator;
- (i) trading infrastructure to conform to any applicable norms and standards stipulated in the licence or published by the Energy Regulator;

(j) prohibiting a trader from charging unreasonable or excessive prices;

(k) sub-contracting by the licensee of the performance of the licensed activities, including the construction and operation (including maintenance) of gas facilities and the provision of gas services;"

(c) by the substitution in subsection (1) for paragraphs (n), (o), (p) and (q) of the following paragraphs, respectively:

"(n) decommissioning of gas facilities on termination, abandonment or lapse of a licence, rehabilitation of affected land and funding for decommissioning and rehabilitation costs; and

(o) the termination of the provision of gas or the operation of gas facilities, including the provision of gas services, where this is necessary from an environmental or health and safety perspective, and reconnection as soon as reasonably possibly without undue discrimination;

(p) maximum gas prices **[for distributors, reticulators and all classes of consumers approved by the Gas Regulator]**

where there is inadequate competition as contemplated in **[Chapters 2 and 3]** Chapter 2 and section 12A(2) of the Competition Act 1998 (Act No. 89 of 1998) as amended;

(q) any advisory service with regard to the safe and efficient use, handling and storage of gas **[must be provided to]** for customers to be provided by **[other than eligible customers, by the]** a trading licensee;"

- (d) by the substitution in subsection (1) for paragraph (u) of the following paragraph:

"(u) **[licensees must provide information]** information to be provided to the Energy Regulator which is necessary for the [Gas] Energy Regulator to perform its functions.";

- (e) by the insertion after subsection (1) of the following subsection:

"(1A) The Energy Regulator may also impose any other license condition that may be required for the purposes of fulfilling one or more of the objects of this Act."; and

- (f) by the substitution for subsection (2) of the following subsection:

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

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

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

(d) The Energy Regulator must decide on any review application, and must, in writing, notify the aggrieved person or

licensee of the outcome of such review, within a reasonable time period."

### **Substitution of section 22 of Act 48 of 2001**

**15.** The following section is hereby substituted for section 22 of the principal Act:

#### **"Non-discrimination**

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

(2) The prohibition of discrimination referred to in subsection (1) applies to actions by licensees in favour of their related undertakings, including a company that is in a group of companies, in particular."

### **Insertion of sections 22A and 22B in Act 48 of 2001**

**16.** The following sections are hereby inserted in the principal Act after section 22:

## "Exclusivity

22A. (1) An applicant for a licence to construct a distribution facility within a particular geographic area, or to sell gas in a particular area, may, at the time of submitting the licence application, request the Energy Regulator to grant it the exclusive right to this licence and to the associated licences within that geographic area, for a particular range of specifications of gas and for a specified period.

(2) The Minister may prescribe additional principles applicable to an application for exclusivity and the Energy Regulator may take decisions on such applications in accordance with the rules made by the Energy Regulator.

(3) Gas must be supplied by a licensee granted exclusivity by the Energy Regulator to any person within its exclusive geographic area on request, if the gas can be delivered in an economically viable manner.

(4) All customers in a distribution area for which a licensee has been granted exclusivity, other than eligible customers, reticulators and customers of reticulators, must purchase their gas from the relevant licensee.

(5) Any licensee granted exclusivity must be bound to an infrastructure or market development plan for the area of exclusivity;

(6) The Energy Regulator must undertake an annual review of the plan contemplated in subsection (5) and the licence must contain provisions allowing, in addition to any other remedies the Energy Regulator

may have, for partial or complete withdrawal of exclusivity to the extent that the licensee has not met the goals stated in the plan.

### **Regulation of tariff and maximum prices**

**22B.** (1) The Energy Regulator must regulate tariffs and maximum prices that may be charged by a licensee according to the principles set out in this section and such additional principles as may be prescribed by the Minister.

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

- (a) may, in the case of each licensee, be based on regulating a maximum tariff, a fixed tariff, or a variable tariff, which is reflective of inputs into a pricing formula or methodology prescribed by the Energy Regulator; or
- (b) must be based on the systematic methodology or methodologies prescribed by the Energy Regulator, applied on a consistent and comparable basis, which is fair, non-discriminatory, simple, transparent, predictable and stable, in order to promote the development of a gas industry and access to affordable gas in the Republic.

(3) The tariffs regulated by the Energy Regulator must enable the licensee to—

- (a) recover its investment;
- (b) recover its prudently and efficiently incurred costs for operating and maintaining its gas facilities; and
- (c) make a profit commensurate with its risk.

(4) The maximum price regulated by the Energy Regulator must enable the licensee to—

(a) recover all efficient and prudently incurred investment and operational costs; and

(b) make profit or add a trading margin commensurate with the risk."

### **Substitution of section 23 of Act 48 of 2001**

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

#### **"Term of licence and non-transferability**

23. (1) Any licence issued in terms of this Act to operate a gas facility, to provide a gas service, or trade in gas, is valid for **[a] the period [of 25 years or such longer period as the Gas Regulator may determine]** specified in the licence and determined by the Energy Regulator, taking into consideration relevant factors including the objects of the Act, the applicant's requested duration of the licence, and the time required to get a return on the investment.

(1A) A licence to construct a gas facility issued in terms of this Act is valid for the period specified in the licence, and determined by the Energy Regulator, taking into consideration such factors as may be relevant, including the applicant's estimate of the construction period and the magnitude of the construction project concerned.

(1B) A licence comes into effect on the effective date stated in the licence or on the date of issue if no effective date is stated.

(2) A licensee may apply, in the form and manner prescribed by the Energy Regulator, to renew a **[have his or her]** licence **[renewed]**.

(3) An application for renewal **[must]** may be granted for such further period as the Energy Regulator may determine, but the **[Gas]** Energy Regulator may set new or different licence conditions.

(4) A licensee may not assign, cede or transfer its licence to another **[party]** person."

#### **Amendment of section 24 of Act 48 of 2001**

**18.** Section 24 of the principal Act is hereby amended—

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

**"Amendment of licence conditions";** and

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

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

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

"(a) on application by the licensee; or

(b) with the permission of the licensee~~;~~."

(d) by the deletion in subsection (1) of paragraphs (c) (d) and (e);

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

"(2) The procedure to be followed in varying, suspending, removing or adding any licence conditions is as prescribed by the Energy Regulator."; and

(f) by the addition of the following subsection:

"(3) If the Energy Regulator proceeds with the variation, suspension, removal or addition without the consent of the licensee, then the licensee may seek to have the variation, suspension, removal or addition set aside by a competent court following judicial review proceedings brought under the Promotion of Administrative Justice Act."

### **Substitution of section 25 of Act 48 of 2001**

**19.** The following section is hereby substituted for section 25 of the principal Act:

#### **"Surrender of licence by licensee**

**25.** (1) The **[Gas Regulator ]** licensee may **[revoke]** surrender a licence on **[the]** application **[of a licensee]** to the Energy Regulator if—

- (a) the licensed facility or activity is no longer required by the licensee;
- (b) the licensed facility or activity is not considered by the licensee to be economically justifiable; or
- (c) another person is willing and demonstrably able to assume the rights and obligations of the licensee concerned in accordance with the

requirements and objectives of this Act, and a new licence is issued to such person in respect of the licensed facility or activity.

(2) Licensees must give the **[Gas]** Energy Regulator at least 12 **[months]** month's notice in writing, of their intention to cease their licensed activities, but this time period is not applicable in the case of a surrender in terms of subsection (1)(c).

(3) The form and procedure to be followed in **[revoking]** surrendering a licence under subsection (1) is as prescribed by the Energy Regulator."

#### **Substitution of section 26 of Act 48 of 2001**

**20.** The following section is hereby substituted for section 26 of the principal Act:

#### **"Compliance notice**

**26.** (1) The Energy Regulator may issue a compliance notice to any person whom the Energy Regulator believes, on reasonable grounds—

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

(b) has failed, where this is required, to obtain a licence in terms of section 15(1) or obtain registration in terms of section 15B;

(c) is engaged in an activity in a manner that is materially inconsistent with this Act; or

(d) has failed to comply with any condition of a licence, which includes, but is not limited to, non-compliance with conditions regarding broad-based black economic empowerment, health and safety, third party access, non-discrimination, tariffs and prices, a failure to timeously commence or continue with activities authorised under a licence, or a failure to fully carry out an infrastructure or market development plan.

(2) Before issuing a compliance notice under subsection (1), the Energy Regulator must—

- (a) give written notice to the affected person indicating the intention to issue the compliance notice;
- (b) set out the reasons in the written notice regarding why the Energy Regulator is considering issuing the compliance notice; and
- (c) afford the affected person a reasonable opportunity to submit, in writing, reasons why the compliance notice should not be issued.

(3) The compliance notice must direct the person to whom it is addressed to take specified measures within a specified period of time to remedy a specific contravention, breach or failure, in order to comply with this Act or a licence.

(4) If the Energy Regulator issues a compliance notice under subsection (1), it may also, at the Energy Regulator's discretion, decide to suspend the licence for the period referred to in subsection (3), in which circumstances the compliance notice must also contain details of the Energy Regulator's decision to suspend the licence.

(5) If the person to whom a compliance notice is addressed does not comply with the compliance notice issued, the Energy Regulator

may impose an administrative fine by notice to the person, payable to the National Revenue Fund, a minimum amount of R2 000 000,00 per day or such higher amount as may be prescribed by the Minister from time to time, for each day on which the contravention, breach or failure to comply continues, after having—

(a) given the person to whom the compliance notice is addressed a reasonable opportunity to make representations to the Energy Regulator regarding why an administrative fine should not be imposed; and

(b) considered any such representations.

(6) When imposing an appropriate administrative fine, in terms of subsection (5), the Energy Regulator must consider the following factors:

(a) The nature, duration, severity, gravity and extent of the contravention, breach or non-compliance;

(b) any loss to, or damage suffered by, any person as a result of the contravention or non-compliance;

(c) the behaviour of the person who committed the contravention or who failed to comply;

(d) market circumstances in which the contravention took place;

(e) the degree to which the person has cooperated with the Energy Regulator; and

(f) whether the person has previously been found in contravention of this Act.

(7) A compliance notice issued in terms of subsection (1) remains in force and must be complied with by the person to whom it is issued, until—

(a) the Energy Regulator withdraws the compliance notice following the receipt of new information regarding the matters referred to in subsection (1);

(b) the compliance notice is set aside by a competent court; or

(c) such time of any suspension of the licence in terms of subsection (4) is lifted.

(8) Any person issued with a compliance notice as contemplated in subsection (1), including any suspension of the licence under subsection (4), or an administrative fine under subsection (5), may seek to have the compliance notice and or fine set aside by a competent court following judicial review proceedings brought under the Promotion of Administrative Justice Act.

## **Substitution of section 27 of Act 48 of 2001**

**21.** The following section is hereby substituted for section 27 of the principal Act.

### **"Revocation of licence**

**27. (1) The Energy Regulator may revoke a licence if it is satisfied that the licensee—**

- (a) obtained a licence by fraud or deliberate submission of false information or statements;
- (b) has entered insolvency proceedings including winding up, business rescue or liquidation (other than for the purpose of a consolidation, amalgamation or merger);
- (c) has made any general assignment, arrangement or compromise with, or for the benefit of, its creditors;
- (d) has failed to comply with the terms and conditions of the licence or with the provisions of this Act, which failure has been the subject of a compliance notice in terms of section 26 and has not been rectified following the issuance of the compliance notice; or
- (e) has lodged a surrender application with the Energy Regulator in terms of section 25.

(2) A licence may not be revoked by the Energy Regulator in terms of subsection (1)(d) until the statutory time periods for launching a judicial review against a compliance notice have passed without such judicial review proceedings being launched or, if launched, until any such judicial review has been abandoned, struck off the relevant court roll or finally dismissed.

## **Repeal of section 28 of Act 48 of 2001**

**22.** Section 28 of the principal Act is hereby repealed.

## Insertion of sections 28A, 28B and 28C in Act 48 of 2001

**23.** The following sections are hereby inserted in the principal Act after section 28:

### "Gas master plan

**28A.** (1) The Minister must—

(a) compile a gas master plan; and

(b) revise the gas master plan as prescribed by the Minister.

(2) The gas master plan must be developed and revised in accordance with the following process:

(a) The Minister must engage in gas supply and demand scenario

planning and prepare a document setting out various scenarios in respect of gas supply, demand and transportation and the estimated costs of those scenarios, and prepare a draft gas master plan which must be published for public comment in the *Gazette*, as prescribed by the Minister;

(b) after considering comments received in terms of paragraph (a), the Minister must, where necessary, amend or revise the gas master plan accordingly and publish the final gas master plan in the *Gazette*; and

(c) in preparing the gas master plan, the Minister must, as far as possible, have regard to all relevant considerations, including—

(i) the location and condition of the current transmission network;

(ii) the relevant facilities for the import or export of gas and the capacity of such systems;

(iii) the extent to which the various gas supply and demand scenarios may require the development, strengthening or upgrading of the systems contemplated in subparagraph (ii), and the cost of development, strengthening or upgrading of the said systems.

(3) The Energy Regulator, the Department and any licensee must, in the prescribe manner, timeously provide such assistance and information as the Minister may require for the purpose of compiling the gas master plan.

### **Powers of Minister regarding new gas facilities, services or gas and integrated energy projects**

**28B.** (1) The Minister may, by notice in the *Gazette*, in consultation with the Energy Regulator—

- (a) make a determination that new gas facilities, services or gas are required to promote the objects of this Act; or
- (b) require that the new gas facility, service or gas must be established or acquired through a procedure which is fair, equitable, transparent, competitive and cost-effective.

(2) A determination referred to in subsection (1) may include provisions dealing with—

- (a) the nature, type and extent of the required gas facilities, services or gas;
- (b) whether or not the person who intends to construct, manage, maintain or operate the required gas facility or service, is an organ of state, a private sector party including co-operatives in terms of Co-operatives Act, or any form of association with a juristic personality, or a combination of these;
- (c) whether or not the person who intends to supply and trade in the required gas is an organ of state, a private sector party including co-operatives in terms of Co-operatives Act, or any form of association with juristic personality, or a combination of these;
- (d) whether the required gas facilities, services or gas is purchased or used by a person designated in the determination as the customer, buyer or user;
- (e) whether the required gas facilities, services or gas is required for an integrated energy project as contemplated in subsection (7); and
- (f) where applicable, the identity of any procurer responsible for preparing and conducting any relevant procurement process related to the required gas facilities, services or gas which may be a person different to the customer, buyer or user referred to in paragraph (d).

(3) The Minister has the following powers which are necessary for giving effect to the determination referred to in subsection (1):

- (a) Undertake such management and development activities, including entering into contracts, as may be necessary to prepare and conduct any procurement processes for the development, construction,

commissioning and operation of a gas facility or for the procurement of gas or gas services;

(b) purchase, hire or let anything or acquire or grant any right or incur obligations for, or on behalf of, the state, including an organ of state or prospective participant in any relevant procurement process;

(c) subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), issue any guarantee, indemnity or security, or enter into any other transaction that binds the state to any future financial commitment that is necessary or expedient for the development, construction, commissioning or effective operation of a public or privately owned gas facility and for the establishment of gas supply or gas services; and

(d) delegate in writing, subject to such conditions he or she may impose, any power conferred on him or her under this subsection, to any official in the Department or to any suitable employee of any other organ of state by agreement with that organ of state.

(4) The Energy Regulator, in exercising its powers and performing its functions under this Act, is bound by any determination made by the Minister in terms of subsection (1).

(5) Any organ of state named as the buyer, user or procurer in any determination made by the Minister in terms of subsection (1) is bound by such determination.

(6) In considering any tariff applicable to a licensee bound by a determination, the Energy Regulator must allow the licensee to recover the

prudently and reasonably incurred costs associated with implementation of the determination.

(7) A determination contemplated in subsection (1) may also provide for the establishment of an integrated energy project which may include one or more gas facilities , as well as other interconnected or related energy infrastructure, installations, buildings, structures, systems, services or processes, including new generation capacity and electricity transmission facilities, as well as the procurement of gas and all infrastructure necessary for a project, in which case, all the provisions of this section must, with the necessary changes, apply to the determination regarding the entire integrated energy project.

(8) The Energy Regulator must, in respect of an integrated energy project contemplated in subsection (7), exercise its powers and perform its functions under this Act and exercise its powers and perform its functions as the Energy Regulator under any other statute in a coordinated and integrated manner.

(9) The Energy Regulator may conclude an agreement with any regulator, organ of state or Government department to facilitate the coordinated trading in gas, the establishment and operation of a gas facility and provision of a service as contemplated in this section, and the establishment of an integrated energy project contemplated in subsection (7).

(10) Nothing in this section is intended to preclude or prohibit the trading in gas, development, construction and operation of gas storage, distribution or reticulation facilities without a Ministerial determination issued in terms of this section.

(11) From the date of the commencement of this Act, no person may construct or operate a new transmission or regasification facility, or expand an existing facility without a Ministerial determination issued in terms of this section or a Ministerial exemption issued in terms of section 34C.

(12) The prohibition in subsection (11) only applies to—

- (a) the construction and operation of a new transmission facility which is larger than a capacity threshold prescribed by the Minister; and
- (b) the expansion of an existing transmission facility that is more than 10 percent of the approved capacity or length in a year.

(13) In making a determination in terms of this section, the Minister—

- (a) must have regard to the content of the gas master plan; and
- (b) may deviate from the gas master plan if it is necessary to do so in the national interest.

### **Indicative licence conditions**

**28C.** (1) A procurer of gas facilities or services pursuant to a determination under section 28B may, in writing, request the Energy Regulator to determine indicative licence conditions or the applicable methodologies that must be applied by the Energy Regulator at the licensing stage to the successful participant or participants in any relevant procurement process.

(2) The Energy Regulator must respond to any request contemplated in subsection (1) within a reasonable time.

(3) The Energy Regulator is competent but not compellable, to apply any indicative licence conditions or applicable methodologies provided to the procurer in terms of subsection (1) at the licensing stage in respect of the relevant gas facilities, services or trading activities."

### **Substitution of section 29 of Act 48 of 2001**

**24.** The following section is hereby substituted for the section 29 of the principal Act:

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

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

(a) at all reasonable times enter any property on which **[a licensed] an** activity regulated under section 15(1) or registrable activity under section 15B 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] Energy Regulator** with such information as may be necessary for the proper application of this Act.

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

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

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

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

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

(1D) An inspector who removes any item from the property being searched must—

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

and

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

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

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

**[(4) No information obtained by the Gas Regulator in terms of this Act which is of a non-generic, confidential, personal,**

**commercially sensitive or of a proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates, except in terms of an order of the High Court.]".**

#### **Insertion of section 29A in Act 48 of 2001**

**25.** The following section is hereby inserted in the principal Act after section 29:

#### **"Handling of confidential information by Energy Regulator**

**29A.** No information obtained by the Energy 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 for the purposes of complying with, or enforcing, this Act or any other law, in accordance with the procedure provided for in the Promotion of Access to Information Act, or in terms of an order of a High Court."

#### **Substitution of section 30 of Act 48 of 2001**

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

## "Voluntary resolution of disputes by [Gas] Energy Regulator

30. (1) (a) **[The Gas]** Without in any way restricting the powers conferred upon it elsewhere in this Act or in any other legislation, the Energy Regulator may, with the [approval] written consent of the parties to a dispute, act as mediator or arbitrator in any matter concerning the trading of gas or the rendering of services, where it considers that it is appropriate to do so under the circumstances.

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

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

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

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

## Substitution of section 31 of Act 48 of 2001

27. The following section is hereby substituted for section 31 of the principal Act:

### "Investigations by [Gas] Energy Regulator"

31. (1) **[The Gas]** Without in any way restricting powers conferred upon it elsewhere in this Act or in any other legislation, the Energy Regulator must conduct investigations on its own initiative, or as a result of any request or referral by any regulatory body, state owned entity, Government department or media, as the case may be, into [complaints by]—

- (a) complaints by customers relating to the supply of gas;
- (b) **[customers relating to]** unreasonable or excessive prices, or tariffs in excess of the regulated tariff imposed by a licensee; and
- (c) **[any customer concerning]** unreasonable differences regarding the supply of gas or gas services by licensees.

(2) Notwithstanding subsection (1), the **[Gas] Energy 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] form and manner prescribed by the Energy Regulator** and be accompanied by—

- (a) supporting relevant information; and

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

(4) If the Energy Regulator finds, following an investigation contemplated in subsection (1), that there has been a breach by a licensee of any provision of this Act or the terms and conditions of a licence, the Energy Regulator may, in addition to any action contemplated in section 26, require the licensee to refund any customer where the breach has resulted in an over-payment by the customer, or where the breach arose from unreasonable or excessive prices or tariffs in excess of the regulated tariff."

### **Substitution of section 32 of Act 48 of 2001**

**28.** The following section is hereby substituted for section 32 of the principal Act:

#### **"Expropriation of land by **[Gas] Energy** Regulator**

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

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

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

- (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 is in the public interest or which [enhance] enhances the Republic's gas infrastructure.

(4) The Expropriation Act applies, with the necessary changes required by the context, to all expropriations under this Act, and any reference to a juristic person in the Expropriation Act must be construed as a reference to the Energy Regulator, and any reference in the Expropriation Act to the Minister charged with the administration of the law under which such juristic person is established, must be construed as referring to the Minister as defined in this Act, who must act in consultation with the Minister of Public Works, for expropriation purposes under the Expropriation Act."

#### **Insertion of section 32A in Act 48 of 2001**

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

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

**32A.** Without derogating from the provisions of section 25, a licensee who intends to terminate, relinquish or abandon any licensed activity must comply with the applicable legislation in respect of land rehabilitation.".

**Amendment of section 33 of Act 48 of 2001**

**30.** Section 33 of the principal Act is hereby amended—

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

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

(b) The **[licensee]** distribution company is responsible for any restoration necessary as a result of the acts referred to in paragraph (a).";

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

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

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

"(3) A **[licensee]** distribution company must exercise **[a]** the power contemplated in subsection (1)(a)—

(a) in accordance with a route and in terms of specifications approved by the authority concerned; **[and]**

(b) except in cases of emergency, under the supervision of the authority concerned**[.]**;

(c) in compliance with any applicable laws; and

(d) within a reasonable time.";

- (d) by the substitution for subsection (5) of the following subsection:

"(5) Subject to subsection (6), a licensee or any person **[authorised thereto in writing by]** in possession of the necessary written authorisation from either the Energy Regulator or a licensee may at all reasonable times enter any premises to which gas is or has been supplied—

(a) in order to inspect, repair, replace or alter any **[pipe, meter, fitting, work and apparatus]** gas equipment belonging to such licensee;

(b) for the purpose of ascertaining the quantity of gas consumed; or

(c) where **[a]** gas supply is no longer required, for the purpose of removing any **[pipe, meter, fitting, work and apparatus]** gas equipment belonging to such licensee.";

- (e) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

"Any person entering **[a]** premises **[under]** in terms of subsection (5) must—"; and

(f) by the substitution in subsection (6) for paragraph (c) following paragraph:

"(c) exhibit **[his or her]** written authorisation at the request of **[such]** the occupant or owner."

### **Amendment of section 34 of Act 48 of 2001**

**31.** Section 34 of the principal Act is hereby amended—

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

"(a) ensuring fair administrative action by the **[Gas]** Energy Regulator in line with the Promotion of Administrative Justice Act and any other applicable legislation;";

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

"(bA) in addition to section 21, the conditions subject to which the Energy Regulator may issue a licence;";

"(bB) activities which must be registered under this Act;";

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

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

- (d) the decommissioning of licenced gas facilities and 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;"
- (d) by the insertion in subsection (1) after paragraph (e) of the following paragraph:
- "(eA) the principles applicable to third party access and interconnection, which principles may distinguish between classes or categories of a gas facilities, gas services, licensees or customers, including mechanisms for resolving disputes regarding third party access and interconnection;"
- (e) by the substitution in subsection (1) for paragraphs (g), (h), (i) and (j) of the following paragraphs, respectively:
- "(g) the procedure to be followed **[at, and the time within which, expropriation]** for expropriations **[proceedings must be conducted];**
- (h) the rendering of information to the **[Gas]** Energy Regulator;
- (i) tariff and maximum price regulation procedures and principles;
- (j) mechanisms to promote **[historically disadvantaged South Africans]** broad-based black economic empowerment;"
- (f) by the insertion in subsection (1) after paragraph (j) of the following paragraph:
- "(jA) facilitation of cross border gas infrastructure;"

- (g) by the substitution in subsection (1) for paragraph (k) of the following paragraph:

"(k) any other matter that may or **[has to]** must be prescribed, **[or]** determined or provided for by the Minister by regulations in terms of this Act.";

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

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

- (i) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) duly consider the comments from the Energy Regulator and the public.";

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

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

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

"(a) the procedures to be followed at meetings of the **[Gas]** Energy Regulator;

(b) the keeping of records by the **[Gas]** Energy Regulator;

(c) the form, **[and]** manner[, ] and contents of licence applications and exemption applications";

- (l) by the substitution in subsection (3) for paragraphs (e) and (f) of the following paragraph, respectively:

- "(e) the form and manner in which objections to licence applications must be lodged and the furnishing thereof to the applicant for **[his or her]** the response thereto;
- (f) the procedure to be followed in considering licence applications and exemption applications";
- (m) by the insertion in subsection (3) after paragraph (f) of the following:
- "(fA) the form, manner and content of third party access requests";
- (n) by the substitution in subsection (3) for paragraph (g) of the following paragraph:
- "(g) the methodology for determining uncommitted capacity and the publishing of information relating to uncommitted capacity by the holders of transmission distribution or storage licences and the publishing of prices for gas supplied to customers other than eligible customers by the holders of **[distribution]** trading licences; "
- (o) by the insertion in subsection (3) after paragraph (g) of the following paragraphs:
- "(gA) the methodology for determining whether unreasonable or excessive prices are being charged by a licensee, which methodology may distinguish between categories or classes of gas facilities, gas services, licensees and customers;
- (gB) the determination of gas specifications, including operating pressure;
- (gC) norms and standards applicable to the construction and operation of any gas facilities and the provision of gas services,

and norms and standards applicable to the construction and operation of trading infrastructure.";

- (p) by the substitution in subsection (3) for paragraph (h) of the following paragraph:

"(h) the procedure to be followed in the review, variation, suspension, addition or removal **[or the revocation]** of licence conditions;"

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

"(hA) the procedure to be followed in considering and processing suspension and revocation applications;"

- (r) by the substitution in subsection (3) for paragraphs (i), (j), (k) and (l) of the following paragraphs, respectively:

"(i) the information to be provided with registrations and the form and manner in which registration must be lodged;

(j) the form, manner and content for lodging complaints and the procedures to be followed in investigations, including the summoning of witnesses, administering of oaths or affirmations and the payment of witness fees;

(k) the inspection of<sub>1</sub> and enquiry into<sub>1</sub> the construction and operation of any gas facility or the provision of any gas services or [any] trading in gas; [and]

(l) consultation with interested and affected parties **[.]**;" and

- (s) by the addition in subsection (3) of the following paragraph:

"(m) any other matter that may, or must, be prescribed in terms of this Act.";

### **Insertion of sections 34A, 34B and 34C in Act 48 of 2001**

**32.** The following sections are hereby inserted in the principal Act after section 34:

#### **"Offences**

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

(a) contravenes section 15(1);

(b) fails, neglects or refuses to pay an administrative fine imposed in terms of section 26(5), unless the Energy Regulator withdraws the compliance notice or the administrative fine is set aside by a court of law in review proceedings;

(c) fails or refuses to furnish the information contemplated in section 15B, or knowingly furnishes false or incorrect information in that regard;

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

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

- (f) does anything calculated to improperly influence any member or personnel of the Energy Regulator concerning any matter connected with an investigation;
- (g) does anything in connection with an investigation that would have been regarded as contempt of court if the proceedings had occurred in a court of law;
- (h) fails to comply with a direction given by the chairperson of a hearing of the Energy Regulator that is being conducted in terms of this Act, which direction is necessary for the orderly conduct of the hearing; or
- (i) contravenes or fails to comply with any other provision of this Act.

(2) A person convicted of an offence stipulated in subsection (1)(a) and (b) shall be liable to a fine or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

(3) A person convicted of an offence stipulated in subsections (1)(c) to (i) shall be liable to a fine or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment.

## **Consent orders**

**34B.** (1) If, during or after the completion of any investigation, the Energy Regulator, respondent, complainant or aggrieved person, as the case may be, agrees to the proposed terms of an appropriate consent order, the Energy Regulator may, without hearing any evidence, confirm that agreement as a consent order.

(2) After hearing a motion for a consent order, the Energy Regulator may—

- (a) make an order as agreed to and proposed by all the parties referred to in subsection (1), as the case may be;
- (b) indicate any changes, if any, that must be made in the draft consent order before the Energy Regulator makes the order; or
- (c) refuse to make the order, and provide reasons therefor.

(3) With the consent of the complainant, a consent order may include an award of damages to the complainant or aggrieved person: Provided that the complainant or aggrieved person may be not be precluded from applying for an award of civil damages in a competent court of law, or for the recovery of awarded damages, as the case may be, where the respondent has failed, refuses or neglects to pay damages to the complainant or aggrieved person within the period recorded in the confirmed consent order.

(4) A consent order agreed to in terms of this section may be served, executed and enforced as an order of the High Court."

## **Exemptions**

**34C.** (1) The Minister may, in consultation with the Energy Regulator, by notice in the *Gazette*, issue and publish an exemption from compliance with this Act if it is likely to—

- (a) safeguard the national security of the Republic;
  - (b) promote the national, strategic or economic interests of the Republic;
- or

(c) discharge an international obligation of the Republic.

(2) The Minister may issue an exemption contemplated in subsection (1) on such terms and conditions as may be appropriate, having regard to the circumstances which give rise to the need to issue the exemption, and also taking into account the objects of the Act."

### **Substitution of section 35 of Act 48 of 2001**

**33.** The following section is hereby substituted for section 35 of the principal Act:

#### **"Transitional provisions**

**35.** (1) Any person owning or operating gas facilities or trading in gas prior to the commencement of this Act, who did not require a licence in terms of the Gas Act, 2001 (Act No. 48 of 2001)—

(a) must, if a licence is required for the relevant activity under this Act,  
within six months after the commencement, submit to the **[Gas] Energy** Regulator an application for a licence in terms of this Act;

(b) may, despite the provisions of this Act, continue with the relevant activity without a licence, while the application contemplated in paragraph (a) is under consideration by the Energy Regulator.

(2) **[(a)]** The **[Gas] Energy** 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)] (3)** Any licence issued in terms of **[paragraph (a)]** subsection (2) must for all purposes be regarded as a licence issued in terms of section 19."

### **Amendment of Schedule 1 of Act 48 of 2001**

**34.** Schedule 1 of the principal Act is hereby amended—

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

- "1. Any person engaged in the transmission or distribution of gas for that person's exclusive use.
2. **[Small]** Any biogas projects **[in rural communities]** not connected to **[the national gas pipeline grid]** a transmission or distribution facility.
3. Gas reticulation and any trading activity **[incidental thereto]** by a reticulator."; and

(b) by the addition of the following items:

- "5. Any person trading gas solely with an associate company.
6. Trading in gas by a person where the quantity of gas sold is less than a quantity as prescribed by the Minister in a year."

### **Short title and commencement**

**35.** This Act is called the Gas Amendment Act, 2021, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE GAS AMENDMENT BILL, 2021**

### **1. BACKGROUND**

1.1 The Gas Act, 2001 (Act No. 48 of 2001)("the Act"), was signed into law on 21 February 2002 to establish a national regulatory framework for the piped gas industry in the Republic of South Africa but only came into force on 1 November 2005.

1.2 The Department of Energy ("the Department") intends to introduce the Gas Amendment Bill, 2021 ("the Bill") in Parliament. The Bill seeks to amend the Act in order to address loopholes, omissions and other challenges experienced in the process of implementing and enforcing the Act. Amongst the gaps identified and addressed through the Bill is the inclusion of the unconventional gases such as coal bed methane, landfill gas and shale gas in the Act.

### **2. OBJECTS OF BILL**

2.1 The main purpose of the Bill is to modernise the Act, in line with current and foreseeable developments in the gas industry landscape, enhance compliance monitoring and enforcement provisions of the Act and incorporate provisions dealing with unconventional gases and new transportation technologies of natural gases that are not explicitly included in the current Act.

2.2 It further intends to address new technological advancements in the gas sector, particularly the transportation of gas by means other than a pipeline, including, but not limited to, transportation as liquefied natural gas and compressed natural gas.

### 3. **CLAUSE BY CLAUSE ANALYSIS**

#### 3.1 **Clause 1**

Clause 1 of the Bill seeks to revise and insert certain definitions, in order to assist in the interpretation of the Bill.

#### 3.2 **Clauses 2 and 3**

3.2.1 Clause 2 amends section 2 of the Act and seeks to promote safe and efficient distribution, storage and re-gasification of gas, and also seeks to promote companies owned or controlled by black people, in accordance with the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

3.2.2 Clause 3 of the Bill amends the heading of chapter 2 from "National Gas Regulator" to "National Gas Regulation", to clarify that this chapter deals with gas regulation.

#### 3.3 **Clause 4**

Clause 4 substitutes section 4 and provides for the functions of the Energy Regulator. The Energy Regulator has the authority to consider applications for

licences in respect of the activities regulated by the Act and may issue licences for the construction or conversion of facilities for gas transmission, gas storage, gas distribution, a gas liquefaction or re-gasification. The Energy Regulator is also authorised to impose and review licence conditions.

### **3.4 Clause 5**

Clause 5 of the Bill amends the heading of chapter 3 from "Gas licences and Registration" to Gas Licensing and Registration".

### **3.5 Clause 6**

This clause amends section 15 of the Act and mainly seeks to add the word "gas" in all references to "facility" that require a licence, namely "transmission, storage, distribution, liquefaction and re-gasification infrastructure" and seeks to ensure that the discussion with the Energy Regulator of any planned activities that require a licence is not done after an application for a licence has been lodged.

### **3.6 Clause 7**

Clause 7 inserts sections 15A and 15B in the Act. In terms of the new section 15A the Minister may declare certain activities not to be licensed activities. The new section 15B requires a person undertaking activities such as the exportation and importation of gas, to be registered with the Energy Regulator.

### **3.7 Clause 8**

Clause 8 seeks to amend the heading of section 16 and also provides for compliance with the Promotion of Access to Information Act, 2000 (Act No. 2 of

2000), regarding confidential treatment of certain information supplied by an applicant for licence, and provides for the applicant to apply for a consolidated licence if he intends to undertake more than one activity for the same development or project.

### 3.8 **Clause 9**

Clause 9 provides for the manner in which an applicant for a licence may publish a notice of an application for a licence.

### 3.9 **Clause 10**

Clause 10 provides for the manner in which the Energy Regulator may consider an application for a licence, which must be in accordance with directions and criteria from the Minister of Energy ("the Minister"), reflecting the objects of the Act, national interests, regional growth or social objectives.

### 3.10 **Clause 11**

This proposed amendment inserts a new section 18A to ensure that any person who objects to a licence application does so in the prescribed manner to the Energy Regulator.

### 3.11 **Clause 12**

Clause 12 substitutes section 19 of the Act and deals with the finalisation of an application for a licence, and provides that the Energy Regulator must finalise an application within 60 days after the expiry of the objection period. Furthermore, clause 11 caters for circumstances that will enable the Energy Regulator to issue an

operation or trading licence to a holder of a construction licence for a gas facility, if the application is made within five years of the issue of construction licence.

### 3.12 **Clause 13**

Clause 13 repeals section 20 of the Act, which deals with the disposal of gas assets controlled by the state.

### 3.13 **Clauses 14**

3.13.1 Clause 14 seeks to amend section 21 of the Act by authorising the Energy Regulator to add more conditions to a licence, such as broad-based black economic empowerment.

3.13.2 Clause 14 also seeks to add paragraphs (n) to (o) in section 21(1) of the Act, to provide for more requirements that should be met for the environmental rehabilitation of a site used in connection with a licensed activity upon the licensee terminating, relinquishing or abandoning that licensed activity.

### 3.14 **Clauses 15 and 16**

3.14.1 Clause 15 amends section 22 of the Act, which deals with non-discrimination between customers, including a company in the same group of companies.

3.14.2 Clause 16 inserts a new section 22A that provides for the applicant for a licence to construct a distribution facility within a particular geographic area or sell

gas in a particular geographic area, to request the Energy Regulator to grant it the exclusive right to the licence within that geographic area, for a particular range of gas and for a specified period. Clause 16 also inserts section 22B which provides for the regulation of tariff and maximum prices for gas by the Energy Regulator.

### **3.15 Clause 17**

This clause inserts a new subsection (1A) and (1B) in section 23 of the Act.

Subsection (1A) provides for the period within which a construction licence is valid.

Subsection (1B) provides for the effective date of a licence.

### **3.16 Clause 18**

This clause inserts subsection (3) in section 24 of the Act which provides for the judicial review of proceedings under Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), if the licensee does not consent to the variation, suspension, removal or addition of any of the licence conditions.

### **3.17 Clause 19**

Clause 19 amends section 25 of the Act to provide for the surrender of a licence by a licensee if the licensed activity is no longer required or is not considered to be economically justifiable by the licensee.

### **3.18 Clause 20**

This amendment substitutes section 26 of the Act in order to provide for instances where the Energy Regulator may issue a compliance notice, the validity of a compliance notice and matters connected therewith.

### 3.19 **Clause 21**

Clause 21 substitutes section 27 of the Act and provides for the revocation of a licence by the Energy Regulator instead of a court.

### 3.20 **Clauses 22**

Clause 22 seeks to repeal section 28 of the Act, which deals with registration with the "Gas Regulator". The issues regarding registration are dealt with under the new section 15B.

### 3.21 **Clause 23**

3.21.1 Clause 23 inserts a new section 28A into the Act, which confers a statutory power on the Minister to compile gas master plan. Clause 23 also inserts a new section 28B into the Act which empowers the Minister to make a determination for new gas facilities, services and gas and integrated energy projects.

3.21.2 Furthermore, clause 23 inserts a new section 28C into the Act which empowers the Energy Regulator to determine indicative licence conditions or applicable methodologies to be applied at the licensing stage to a successful participant in procurement process.

### 3.22 **Clause 24**

Clause 24 amends section 29 of the Act by making technical amendments and inserting new paragraphs dealing with additional powers of entry and inspection by the Energy Regulator and the collection of information by the Minister.

### 3.23 **Clause 25**

Clause 25 inserts a new section 29A into the Act, which addresses the manner in which the Energy Regulator may deal with any confidential information, at its disposal, obtained in terms of the Bill, in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

### 3.24 **Clauses 26, 27 and 28**

3.24.1 Clause 26 amends section 30 of the Act which deals with voluntary resolution of disputes by the Energy Regulator, and seeks to effect technical amendments.

3.24.2 Clause 27 amends section 31 of the Act and provides for the process of investigation of complaints by the Energy Regulator.

3.24.3 Clause 28 also adds a new subsection (4) to section 32 of the Act, to provide for the Expropriation Act, 1975 (Act No. 63 of 1975), to apply to all expropriations of land by the Energy Regulator.

### 3.25 **Clause 29**

Clause 29 inserts a new section 32A into the Act, and provides for the prescription of the procedure to be followed to ensure that a site connected with a licensed activity is rehabilitated upon termination, relinquishment or abandonment of that licensed activity.

### 3.26 **Clauses 30**

Clause 30 effects technical amendments.

### 3.27 **Clause 31**

Clause 31 amends section 34 of the Act, which provides for the regulations and rules which must be made by the Minister and the Energy Regulator, respectively. Clause 31 seeks to extend the power of the Minister to make regulations and also extend the power of the Energy Regulator to make rules.

### 3.28 **Clause 32**

Clause 32 inserts a new section 34A to provide for offences and penalties in respect of contraventions of certain provisions of the Act. The new section 34B provides for the consent order that the Energy Regulator may make, during or after, an investigation, into a complaint regarding a licensed activity. Clause 32 also inserts a new section 34C which empowers the Minister to issue exemptions from compliance with the Act.

### 3.29 **Clause 33**

Clause 33 provides for transitional provisions in respect of any person who is engaged in activities for which a licence was not a requirement but is now required. Such person must now apply for a licence.

### 3.30 **Clause 34**

Clause 34 amends Schedule 1 of the Act by the insertion in Schedule 1 of item 5 in respect of exemptions from obligation to apply for, and hold, a licence.

### 3.31 **Clause 35**

Clause 35 provides for short title and commencement.

## 4. **CONSULTATION**

4.1 The consultation process dates back from 2012 whereupon the Bill was presented to Cabinet on 28 March 2012 and Cabinet recommended that the Department consult the Economic and Infrastructure Development Cluster and submit the Bill for pre-certification. The following departments were consulted as part of the Cluster namely:

- Department of Mineral Resources;
- Department of Labour;
- Department of Economic Development;
- Department of Rural Development and Land Reform;
- Department of Transport;

- Department of Environmental Affairs; and
- Department of Public Enterprises.

4.2 The draft Bill was published on 02 May 2013 in Government Gazette Number 36425 for submission of written comments and a window period was open for 60 days.

4.3 Stakeholder consultation workshops were conducted in all the nine provinces from 15 May 2013 until 28 June 2013 in order to solicit comments from stakeholders. Further to that, the Department consulted with the Department of Environmental Affairs; Department of Mineral Resources; Department of Science and Technology; Department of Trade and Industry; Department of Rural Development and Land Affairs; Department of Labour; Department of Economic Development; Department of Transport; and Department of Public Enterprise requesting submission of written comments on the Draft Bill. This was to harmonise work done and for the relevant departments to consider the impact of the Draft Bill and to comment thereon.

4.4 Written comments received from stakeholders as well as the departments consulted were considered by the Department and, where necessary, incorporated into the Draft Bill. A consolidated spreadsheet indicating comments received and the department's response was prepared (available on request). A final stakeholder consultation workshop was held in Pretoria on 14 September 2013 in order to solicit clarity on the written comments submitted during the window period for the submission of comments. National Economic Development and Labour Council ("NEDLAC") was consulted between June 2013 to June 2014; and Final NEDLAC

Report was submitted on 02 July 2014 to the Office of the Minister. On completion of the stakeholder consultation process, including consultation with NEDLAC, the DoE reviewed and, where appropriate incorporated the comments received at NEDLAC into the Bill.

4.5 In 2015, Cabinet adopted a new impact assessment system for all policy, legislations and regulations referred to as Social Economic Impact Assessment System ("SEIAS") in line with the Medium Term Strategic Framework to improve policy development and create a more efficient development of legislations and regulations. DoE in consultation with the Department of Planning, Monitoring and Evaluation ("DPME") subjected the draft Bill incorporating NEDLAC and stakeholder comments through the SEIAS process. On 15 October 2015 the Department received a SEIAS sign-off from the DPME.

4.6 In 2015, the Minister, with the concurrence of National Energy Regulator of South Africa ("NERSA"), determined that 3 126 MW of new IPP gas-fired generation capacity (Gas to Power) was required, to be generated from any gas type or source.

4.7 Subsequent to that, the Department, the Department's Independent Power Producer office and NERSA revised the final Draft Bill to align it with the Gas to Power procurement process. The process of aligning the Bill with the Gas to Power was concluded and the Department saw a need to table the Bill again to NEDLAC in 2018 on the new provisions that provide for the Gas to Power. The Bill was introduced in NEDLAC on the 24<sup>th</sup> of July 2018 and thereafter a task team comprising of Labour, Business and Government was formed to engage on the Gas

to Power provisions incorporated in the Bill. The process of NEDLAC was concluded and a NEDLAC report indicating the areas of agreement and disagreement was submitted to the office of the Minister on 12 April 2019.

4.8 Finally due to the effluxion of time the SEIAS Report issued in 2015 became outdated, and had to be enhanced. The enhanced SEIAS report was submitted to DPME on 13 March 2019 and a signed off cluster certificate was received on 17 July 2019 that the Department consult Director General Cluster. The Director General Cluster was consulted on the 18 August 2020, in which the Bill was approved without any further inputs. Subsequent to that Ministerial Cluster was consulted on the 2 November 2020 and the Bill was approved without any further comments for submission to Cabinet for Parliament. A final SEIAS signed off certificate was issued by DPME on 5th November 2020, to accompany the Bill to Cabinet for Parliament

## **5. FINANCIAL IMPLICATIONS FOR STATE**

The Bill will not have any organisational and personnel implications for the Department and does not create further financial liabilities to the State.

## **6. PARLIAMENTARY PROCEDURE**

6.1 The Constitution of the Republic of South Africa, 1996 (“the Constitution”) prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

6.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

6.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule i.e. *Tongoane and Others v Minister for Agriculture and Land Affairs and Others Case CCT 100/09 [2010]* ZACC 10. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

6.4 Therefore issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

6.5 The Bill seeks to promote safe and efficient distribution, storage and re-gasification of gas, and also seeks to promote companies owned or controlled by black people, in accordance with the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) i.e. by authorising the Energy Regulator to add broad-based black economic empowerment as one of the condition to a licence. The Bill also provides for the functions of the Energy Regulator. The Energy Regulator has

the authority to consider applications for licences in respect of the activities regulated by the Act and may issue licences for the construction or conversion of facilities for gas transmission, gas storage, gas distribution, a gas liquefaction or re-gasification.

6.6 The Minister may, by notice in the *Gazette*, declare activities that may no longer be licensed activities. Registration with the Energy Regulator is required in respect of persons who undertake activities such as exportation and importation of gas. The Energy Regulator is also authorised to impose and review licence conditions.

6.7 The Bill provides for the confidential treatment of certain information supplied by an applicant for licence, in accordance with the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and provides for the applicant to apply for a consolidated licence if he intends to undertake more than one activity for the same development or project. The Energy Regulator must consider an application for a licence in accordance with directions and criteria from the Minister reflecting the objects of the Act, national interests, regional growth or social objectives. The Energy Regulator must finalise the application within 60 days after the expiry of a stipulated objection period. Furthermore, the Energy Regulator may issue an operation or trading licence to a holder of a construction licence for a gas facility, if the application is made within five years of the issue of construction licence.

6.8 The Bill provides for the applicant for a licence to construct a distribution facility within a particular geographic area or sell gas in a particular geographic area, to request the Energy Regulator to grant it the exclusive right to the licence within

that geographic area, for a particular range of gas and for a specified period. The Energy Regulator is also granted express authority to regulate and monitor tariffs and maximum gas prices.

6.9 A licensee may apply to a court of law for judicial review of proceedings under Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), if the does not consent to the variation, suspension, removal or addition of any of the licence conditions by the Energy Regulator, and a licensee may surrender a licence if the licensed activity is no longer required or is not considered to be economically justifiable by the licensee.

6.10 The Bill provides for, and enhances, compliance monitoring and enforcement in the Act by providing for compliance notices that can be issued by the Energy Regulator for the non-compliance with the Act, and also provides for more stringent administrative penalties for non-compliance with a compliance notice.

6.11 The Bill empowers the Minister to compile a gas master plan on national policy on gas infrastructure planning, and also empowers the Minister to make a determination for new gas facilities, services and gas and integrated energy projects. The Energy Regulator may determine indicative licence conditions or applicable methodologies to be applied at the licensing stage to a successful participant in procurement process.

6.12 The Bill provides for the expropriations of land by the Energy Regulator Expropriation Act, 1975 (Act No. 63 of 1975), and for the procedure to be followed to

ensure that a site connected with a licensed activity is rehabilitated upon termination, relinquishment or abandonment of that licensed activity.

6.13 The Bill provides for offences and penalties in respect of contraventions of certain provisions of the Act, for the general obligations of licensees to comply with licence conditions, and consent orders that may be issued by the Energy Regulator in respect of an agreement between a respondent and complainant or aggrieved person, relating to a dispute that arose in respect of the implementation of the Act, that was investigated by the Energy Regulator.

6.14 The Bill also provides for transitional provisions in respect of any person who is currently engaged in activities for which a licence was not a requirement but is now required, that person must now apply for a licence once the envisaged Gas Amendment Act comes.

6.15 The proposed amendments reflected have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

6.16 In our view the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.

6.17 We are therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 to the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.

6.18 We are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 18(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities or pertaining to any matter referred to in section 154(2) of the Constitution.