

TETRA4

COMMENTS ON THE
GAS AMENDMENT BILL

[B9 – 2021]

NOVEMBER 2021

INTRODUCTION



1. Tetra4:
 - a. is an emerging natural gas producer, currently developing the Virginia Gas Project.
 - b. is the holder of the first and only onshore production right as well as various exploration rights covering a 187 000-hectare gas field across Welkom, Virginia and Theunissen, in the Free State.
 - c. currently produces compressed natural gas through its pilot plant and intends to produce liquified natural gas and liquid helium through its production right and the development of the Virginia Gas Project.

2. Tetra4 extends its thanks to the Portfolio Committee on Mineral Resources and Energy for giving Tetra4 the opportunity to consult and comment on the Gas Amendment Bill [B9 – 2021].

OVERVIEW

1. The South African Oil and Gas industry is still in early development and it requires both local and foreign capital investment for its success.
2. Developmental Oil and Gas Projects, much like most mining projects, are capital intensive, without seeing any return on investment for sometime after the investment. This makes investment risky.
3. The key to attracting investment, both locally and internationally is to have a stable and attractive regulatory framework, in which investors can participate.
4. In participating in these consultations, Tetra4 hopes to contribute to the creations of a stable and attractive regulatory framework to attract investment into South Africa.
5. Tetra4 has already submitted detailed written representations on the Gas Amendment Bill and will only, as part of this presentation, discuss the most pertinent representations.

OVERVIEW (continued)

Tetra4 intends to discuss the following key aspects of the Gas Amendment Bill, namely:

- a) Increase in the types of gases that are regulated;
- b) Definition of “*storage*” (section 1);
- c) Definition of “*trading*” (section 1);
- d) Definition of “*distribution*” (section 1);
- e) Definition of “*transmission*” (section 1);
- f) Clarity regarding the regulation of production activities;
- g) Registration (section 15B);
- h) Exclusivity (section 22A); and
- i) Tariffs (section 22B).

Definition of “gas” under section 1 of the Amendment Bill:

“all hydrocarbon gases 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”

Increase in the types of gases that are regulated

1. The Gas Act focuses on the regulation of piped hydrocarbon gases. The Amendment Bill, on the other hand, seeks to regulate all hydrocarbon gases whether they are transported by pipeline or not as the proposed definition of “gas” under the Amendment Bill no longer refers to gases “*transported by pipeline*”.
2. The proposed definition of “gas” in the Amendment Bill also expressly refers to “*re-gasified liquefied petroleum gas*” [our emphasis] whereas the current definition in the Gas Act only refers to “*re-gasified liquefied natural gas*” [our emphasis].
3. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provides that holders of a valid Production Right may explore, beneficiate and sell their product/s. The proposed definition should be amended to explicitly exclude domestic gas across the value chain provided the entity operating in the value chain is regulated under the MPRDA. |

Definition of “storage” under section 1 of the Amendment Bill:

“the holding of gas in fixed infrastructure and any other activity incidental thereto, but excludes the storage 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.”

Definition of “storage” (section 1)

1. The Amendment Bill proposes changing the definition of “storage” in the Gas Act from “*holding of gas as a service*” [our emphasis] to the “*holding of gas in fixed infrastructure*” [our emphasis].
2. Under the Gas Act, gas that is stored in pipelines which are used primarily for the transmission and distribution of gas is excluded from the definition of “storage”.
3. The Amendment Bill proposes increasing the number of excluded activities such that gas stored:
 - 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, is excluded from the definition of “storage” and accordingly would not require a storage licence.
4. The proposed definition might create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provides that holders of a valid Production Right may explore, beneficiate and sell their product/s. The proposed definition should be amended to explicitly exclude domestic gas across the value chain provided the entity operating in the value chain is regulated under the MPRDA.

Definition of “trading” under section 1 of the Amendment Bill:

“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.”

Definition of “trading” (section 1)

1. The current definition of “trading” under the Gas Act is “*the purchase and sale of gas as a commodity by any person and any services associated therewith, excluding the construction and operation of transmission, storage and distribution system*” [our emphasis].
2. The proposed definition of “trading” under the Amendment Bill, however, is “*the sale of gas to a reticulator, to an end consumer and by a transmission company or a distribution company and any activity incidental thereto, including the construction and operation of trading infrastructure*” and specifically states that the “*construction and operation of liquefaction, re-gasification, transmission, storage and distribution facilities*” [our emphasis] is excluded from this definition.
3. Therefore, the definition of “trading” proposed by the Amendment Bill applies to transmission or distribution companies that sell gas and not to any person who purchases and sells gas, as per the current definition in the Gas Act.

Definition of “trading” under section 1 of the Amendment Bill:

“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.”

Definition of “trading” (section 1) (continued)

4. The definition proposed by the Amendment Bill also excludes the construction and operation of liquefaction and re-gasification facilities in addition to the construction and operation of transmission, storage and distribution facilities.
5. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provides that holders of a valid Production Right may explore, beneficiate and sell their product/s. The proposed definition should be amended to explicitly exclude domestic gas across the value chain provided the entity operating in the value chain is regulated under the MPRDA.

Definition of “*distribution*” under section 1 of the Amendment Bill:

“the transportation 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 Energy Regulator may permit to an end consumer, (excluding eligible customers) or to reticulation systems, or to both an end consumer, (excluding eligible customers) and to reticulation systems, and any other activity incidental thereto, and ‘distribute’, ‘distributing’ and ‘distributor’ have corresponding meanings”

Definition of “*distribution*” (section 1)

1. The definition of “*distribution*” under the Gas Act is defined as the “*distribution of bulk gas supplies and the transportation thereof by pipelines with a general operating pressure of more than 2 bar gauge and less than 15 bar gauge*” [our emphasis].
2. The Amendment Bill proposes expanding the definition of “*distribution*” so that it is no longer limited to the “*distribution of bulk gas supplies*” and the distribution and transportation thereof “*by pipelines*”.
3. The definition proposed by the Amendment Bill would accordingly apply to any distribution or transportation of gas with a general operating pressure of more than 2 bar gauge and less than 15 bar gauge by any means.
4. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provides that holders of a valid Production Right may explore, beneficiate, and sell their product. The proposed definition should be amended to explicitly exclude domestic gas across the value chain provided the entity operating in the value chain is regulated under the MPRDA. |

Definition of “*transmission*” under section 1 of the Amendment Bill:

“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.”

Definition of “*transmission*” (section 1)

1. The Amendment Bill proposes expanding the definition of “*transmission*” so that it is no longer limited to the “*bulk transportation of gas by pipeline*” but rather applies to the “transport of gas by pipeline (other than in an upstream pipeline)” [our emphasis].
2. The proposed definition might create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provides that holders of a valid Production Right may explore, beneficiate and sell their product. The proposed definition should be amended to explicitly exclude domestic gas across the value chain provided the entity operating in the value chain is regulated under the MPRDA.

Definition of “production” under section 1 of the Gas Act:

“the recovery, processing, treating and gathering of gas from wells in the earth up to the boundary of the mine, or the manufacture of synthetic or artificial gas, or the manufacturing of any gases in the refining process up to the boundary of the factory, and any other activity incidental thereto and “produce” and “producing” have corresponding meanings.”

Clarity regarding the regulation of production activities

1. The Gas Act defines “*production*” as “*the recovery, processing, treating and gathering of gas from wells in the earth up to the boundary of the mine, or the manufacture of synthetic or artificial gas, or the manufacturing of any gases in the refining process up to the boundary of the factory, and any other activity incidental thereto...*” [our emphasis].
2. The definition is therefore wide enough to include any process of recovery, processing, treatment and gathering of gas within the boundary of mine, including the physical processes of liquefaction or re-gasification (which require a licence in terms of section 15(1) of the Gas Act).
3. The current definition of “*production*” is accordingly problematic as it is unclear whether a production plant must be licensed in terms of the Gas Act simply because it relies on the process of liquefaction or re-gasification to process or gather gas from the earth, activities that are currently regulated by the MPRDA.
4. Given that the Gas Act regulates the secondary process of the “*transmission, storage, distribution, liquefaction and re-gasification*” of gas (i.e. downstream activities) and not the primary process of the “*production*” of gas (i.e. upstream activities), it is unlikely that the legislature intended that any person involved in liquefaction or re-gasification activities that are used in the course of the primary process of the “*production*” of gas would require a licence in terms of the Gas Act, especially since such upstream activities are already regulated in terms of the MPRDA.

Definitions under section 1 of the Amendment Bill:

*“**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;*

*‘**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.”

Clarity regarding the regulation of production activities (continued)

5. The Amendment Bill appears to seek to address any potential confusion by removing the definition of “*production*” and replacing it with definitions of “*production area*”, “*production operation*” and “*production right*” as defined in the MPRDA.
6. The Amendment Bill also proposes including a definition for “*upstream pipeline*” which is defined as “*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*”.
7. Furthermore, the proposed definitions of “*storage*” and “*transmission*” in the Amendment Bill expressly exclude the storage and transport of gas by upstream pipeline.
8. Therefore, it appears that only the construction, conversion or operation of liquefaction or re-gasification facilities involved in the downstream activities of the secondary process of the “*transmission, storage, distribution, liquefaction and re-gasification*” of gas will require a licence in terms of the Amendment Bill. We require confirmation on this.
9. As mentioned, it is essential that the Amendment Bill does not create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA.

Section 15B(1) of the Amendment Bill provides:

“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.”

Registration (section 15B)

1. Section 15B(1) of the Amendment Bill proposes increasing the number of people obliged to register with NERSA (and therefore exempted from applying for and holding a licence as per Schedule 1).
2. The Gas Act does not prescribe a time period for registration and so it was hoped that the Amendment Bill would provide more clarity as to how long an application for registration would take.
3. Unfortunately, the Amendment Bill has not provided any time periods and merely states that the application for registration must be submitted in the form and manner prescribed by NERSA. Neither the Piped Gas Regulations nor the Gas Act Rules, 2021 published under the Gas Act stipulate the time period for registration applications. This should be addressed.
4. The proposed registration list should also be amended to explicitly exclude any companies who are holders of valid and existing production rights under the MPRDA.

Section 22A(1) of the Amendment Bill provides:

“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.”

Exclusivity (section 22A)

1. The Amendment Bill proposes including a separate provision that deals specifically with geographic exclusivity. ■
2. The Amendment Bill proposes extending the geographic exclusivity provision to include distributors as well as traders of gas. It is also important to note that the definition of “*distribution*” under the Amendment Bill has been extended so that it is no longer limited to the “*distribution of bulk gas supplies*”.
3. This means that any distributors and traders of gas that have been granted exclusivity by NERSA must supply gas to any person within their exclusive geographic area on request, provided that 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. In order for the industry to develop appropriately, participants should be allowed to determine its standalone economics to support its business case alongside geographic areas of importance for their business case. The concept of granting exclusivity for geographic areas will simply create monopoly in those areas and prejudice free trade and the consumers ability to source product on the most competitive terms. ■

Section 22B of the Amendment Bill provides:

“22B(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.”

Tariffs (section 22B)

1. The current position under section 4(h) of the Gas Act is that NERSA must “*monitor and approve, and if necessary regulate, transmission and storage tariffs*” [our emphasis].
2. Section 4(1)(m), read with section 22B of the Amendment Bill, however, proposes that NERSA must regulate all tariffs and prices.
3. The Amendment Bill also goes into further detail about the regulation of tariffs and section 22B(3) proposes that the tariffs regulated by NERSA must enable a licensee to:
 - i. recover its investment,
 - ii. recover its prudently and efficiently incurred costs for operating and maintaining its gas facilities, and
 - iii. make a profit commensurate with its risk.
4. Section 22B(4) further proposes that the maximum price regulated by NERSA must enable the licensee to recover all efficient and prudently incurred investment and operational costs; and make profit or add a trading margin commensurate with the risk.

Section 22B of the Amendment Bill provides:

“22B(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.”

Tariffs (section 22B) (continued)

- Investments of this nature have different economic drivers. The proposed definitions contained in the Amendment Bill are wide and therefore will catch many different types of projects.
- It would be naïve to think that a single mechanism prepared by NERSA would be appropriate for these types of projects and returns required by the investors.
- In order to develop this market effectively a “Free Trade” concept should be allowed to flourish. The investor will need to make sure that their product is competitively priced against other sources of product or alternatives of their product. If not, their target customers will simply not procure their product.

CONCLUSION

1. We trust that the comments and recommendations will be of assistance to the Portfolio Committee on Mineral Resources and Energy in considering the impact of the proposed amendment.
2. Tetra4 would like to thank the Portfolio Committee for allowing us to participate in these consultations.
3. We hope that our representations and suggestions assist in creating a long term stable regulatory framework for oil and gas projects in South Africa.

TETRA4



THANK YOU