

30 July 2021

Mr Sahlulele Luzipo
Chairperson of the Portfolio Committee on Mineral Resources and Energy

Attention: Mr Arico Kotze
By email: akotze@parliament.gov.za

Dear Mr Luzipo

IN RE: WRITTEN SUBMISSIONS ON THE GAS AMENDMENT BILL [B9 -2020]

1. Introduction

Tetra4 is a natural gas producer that provides sustainable, clean energy solutions. Tetra4 is a vertically integrated oil and gas producer operating in South Africa holding the first, and currently, only onshore petroleum production license issued by the Department of Mineral Resources (DMR) through the Petroleum Agency of South Africa (PASA).

2. Increase in the types of gases that are regulated

- 2.1. The Gas Act focuses on the regulation of piped hydrocarbon gases as the current definition of “gas” under the Gas Act is defined as “*all hydrocarbon gases transported by pipeline*”. Similarly, the preamble of the Gas Act refers to the promotion of the “*orderly development of the piped gas industry*” [our emphasis].
- 2.2. 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*”. There is also no reference to piped gas in the proposed definition of “*distribution*” and the preamble of the Amendment Bill which simply refers to the “*orderly development of the gas industry*”.
- 2.3. The proposed definition of “gas” in the Amendment Bill also expressly refers to “*re-gasified liquified petroleum gas*” [our emphasis] whereas the current definition in the Gas Act only refers to “*re-gasified liquified natural gas*” [our emphasis].
- 2.4. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the Mineral and Petroleum Resources Development Act 28 of 2002 (“**MPRDA**”). The MPRDA provisions that holders of a valid Production Right may explore, beneficiate and sell their product/s. The proposed

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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.

3. Definition of “*storage*”

- 3.1. The Amendment Bill proposes changing the definition of “*storage*” from “*holding of gas in as a service*” [our emphasis] in the Gas Act to the “*holding of gas in fixed infrastructure*” [our emphasis].
- 3.2. 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*”.
- 3.3. The Amendment Bill proposes increasing the number of excluded activities such that gas stored:
 - 3.3.1. for own use;
 - 3.3.2. at a transmission, distribution, liquefaction or upstream pipeline; or
 - 3.3.3. 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.
- 3.4. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provisions that holders of a valid Production Right may explore, benefitiate 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.

4. Definition of “*trading*”

- 4.1. 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].
- 4.2. 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.

- 4.3. 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.
- 4.4. 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.
- 4.5. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provisions that holders of a valid Production Right may explore, benefit 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.

5. Definition of “distribution”

- 5.1. 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].
- 5.2. 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*”.
- 5.3. 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.
- 5.4. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provisions that holders of a valid Production Right may explore, benefit, 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.

6. Definition of “distribution”

- 6.1. 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].
- 6.2. 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*”.

- 6.3. 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.
- 6.4. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provisions 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.

7. Definition of “*transmission*”

- 7.1. The definition of “*transmission*” under the Gas Act is defined as the “*bulk transportation of gas by pipeline supplied between a source of supply and a distributor, reticulator, storage company or eligible customer, or any other activity incidental thereto*” [our emphasis].
- 7.2. 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)*”.
- 7.3. Given that the definition of “*transmission*” under the Gas Act is silent as to the operating pressure, the Amendment Bill proposes expressly specifying that the operating pressure for gas by transmission pipelines is 15 bar gauge or more.
- 7.4. The proposed definition would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provisions 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.

8. Clarity regarding the regulation of production activities

- 8.1. 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].
- 8.2. 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).

- 8.3. 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.
- 8.4. 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.
- 8.5. The Amendment Bill seeks 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.
- 8.6. 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*”.
- 8.7. The proposed definitions of “*storage*” and “*transmission*” in the Amendment Bill accordingly expressly exclude the storage and transport of gas by upstream pipeline.
- 8.8. Therefore, under the Amendment Bill, it is clear 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 require a licence in terms of the Amendment Bill.
- 8.9. The proposed Activities would create an ambiguous licensing and regulatory regime for domestic gas produced and regulated under the MPRDA. The MPRDA provisions that holders of a valid Production Right may explore, beneficiate, and sell their product. The proposed Activities 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.

9. Registration

- 9.1. Section 15B (1) of the Amendment Bill proposes increasing the number of people obliged to register with the National Energy Regulator of South Africa (“*NERSA*”) (and therefore

exempted from applying for and holding a licence as per Schedule 1) for the performance of certain activities such as those:

- 9.1.1. involved in the “exportation or importation” of gas (not “*production or importation*” of gas as is currently the position under the Gas Act) [our emphasis];
 - 9.1.2. purchasing gas as an eligible customer (customers who meet the qualifying threshold determined by the Minister);
 - 9.1.3. engaged in the transmission or distribution of gas for that person’s exclusive use (the Gas Act limits the registration requirement to those engaged in the transmission of gas for that person’s exclusive use);
 - 9.1.4. any biogas projects (not just “*small*” biogas projects as per the Gas Act) not connected to a transmission or distribution facility (regardless of whether it takes place in a rural community or not);
 - 9.1.5. gas reticulation and any trading activity by a reticulator;
 - 9.1.6. any person trading gas solely with an associate company; and
 - 9.1.7. 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.
- 9.2. 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.
- 9.3. 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.
- 9.4. Neither the Piped Gas Regulations nor the Gas Act Rules, 2021 (the “**Rules**”) published under the Gas Act stipulate the time period for registration applications. The Rules simply state that NERSA must, within 14 days of receipt of an application, inform an applicant in writing whether or not the application contains all the required information specified in these Rules and is therefore accepted by NERSA. The Rules do not provide the time period within which NERSA must reach a decision on a registration application.
- 9.5. The proposed Registration list should be amended to explicitly exclude any companies who are holders of valid and existing Production rights under the MPRDA.

10. Exclusivity

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- 10.1. Section 21 of the Gas Act sets out the licence conditions that NERSA may impose within the following framework of requirements and limitations, including:
 - 10.1.1. *“apart from direct sales via physical by-passes to eligible customers who may alternatively have access to the distribution network at the distributor’s discretion, a distributor will be granted an exclusive geographic area, but only for a particular range of specifications of gas determined by [NERSA];*
 - 10.1.2. *a distributor will be granted the construction, operation and trading licences for its exclusive geographic area. The construction and operation licences will be exclusive for the period of validity of such licences, and the trading licence will be exclusive for a period determined by [NERSA];*
 - 10.1.3. *an exclusive geographic area must be based on the distributor’s ability to supply present and future potential consumers at competitive prices and conditions; and*
 - 10.1.4. *gas must be supplied by a licensed distributor within its exclusive geographic area to any person on request, if such service is economically viable”.*
- 10.2. The Amendment Bill proposes including a separate provision that deals specifically with geographic exclusivity. Section 22A(1) of the Amendment Bill provides that “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 [NERSA] 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” [our emphasis].
- 10.3. The Amendment Bill therefore 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” (as discussed in paragraph 5).
- 10.4. 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.
- 10.5. 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.
- 10.6. The Amendment Bill also proposes introducing the requirement for distributors or traders to prepare a binding Infrastructure or Market Development Plan in respect of the

area for which exclusivity is sought or granted, which must be annually reviewed by NERSA.

- 10.7. If the distributor or trader does not meet the goals stated in the Infrastructure or Market Development Plan, the Amendment Bill provides that NERSA may withdraw the exclusivity.
- 10.8. Furthermore, section 26 of the Amendment Bill provides that NERSA may issue a compliance notice to any person who NERSA believes, on reasonable grounds, has failed to comply with any condition of a licence, which includes, but is not limited to, a failure to fully carry out an Infrastructure or Market Development Plan.
- 10.9. 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.

11. Tariffs

- 11.1. 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].
- 11.2. Section 4(1)(m), read with section 22B of the Amendment Bill, however, proposes that NERSA must regulate all tariffs (i.e. transmission, storage and distribution tariffs) and maximum prices that may be charged by a licensee.
 - 11.2.1. recover its investment,
 - 11.2.2. recover its prudently and efficiently incurred costs for operating and maintaining its gas facilities, and
 - 11.2.3. make a profit commensurate with its risk.
- 11.3. 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.
- 11.4. Investments of this nature have different economic drivers. The proposed Definitions contained in this Amendment 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 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.

12. Conclusion

- 12.1. We trust that the comments and recommendations, as set out above, will be of assistance to the Portfolio Committee in considering the impact of the proposed amendment.
- 12.2. Finally, please note that Tetra4 would welcome the opportunity to make further oral representations on the Bill.

Please address all further queries or correspondence to Will Fritz at will@renergen.co.za

Signed for and on behalf of **Tetra4 Proprietary Limited**:



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