

REPUBLIC OF SOUTH AFRICA

GAS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory
summary of Bill and prior notice of its introduction published in Government Gazette
No of)
(The English text is the official text of the Bill)*

(MINISTER OF MINERAL RESOURCES AND ENERGY)

[B — 2023]

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.

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 an application for a licence in relation to any activity referred to 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 persons' is a generic term which means Africans, Coloureds and Indians—

(a) who are citizens of the Republic of South Africa by birth or descent; or

(b) who became citizens of the Republic of South Africa by naturalisation—

(i) before 27 April 1994; or

(ii) on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;

(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:

" **Competition Act** means the Competition Act, 1998 (Act No. 89 of 1998);

'**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 [**of Minerals and Energy**] responsible for mineral resources and 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 **[according to criteria prescribed by regulation to points of ultimate consumption]** to an end consumer, or to reticulation systems, or to both **[points of ultimate consumption]** 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]** licenced 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 who **[in the prescribed manner may buy gas directly from suppliers without the intervention of a distribution company]** meets the qualifying threshold prescribed 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;

'excessive price' means a price that is higher than a competitive price and where such difference is unreasonable, determined by taking into account all relevant factors, which may include, but are not limited to —

- (a) relevant comparator firm's prices and level of profits in a competitive market;
- (b) price-cost margin, internal rate of return, return on capital invested or profit history;
- (c) the licensee's prices—
 - (i) in markets in which there are competing products;
 - (ii) to customers in other geographic markets;
 - (iii) for similar products in other markets; or
 - (iv) historically;
- (d) the length of time the prices have been charged at that level;
- (e) the structural characteristics of the relevant market, including the extent of the licensee's market share, the degree of contestability of the market, barriers to entry and past or current advantage that is not due to the licensee's own commercial efficiency or investment, such as direct or indirect state support for a firm or firms in the market;";

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

'facility' means all the necessary and incidental infrastructure associated with the activities referred to in section 15;"

- (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, and any low-carbon and renewable gases that may be prescribed by the Minister;";

- (l) by the deletion of the definition of "Gas Regulator";
- (m) 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 referred to in section 22A.
- 'integrated energy project' means a project provided for under a determination made by the Minister in terms of section 28A(7);";
- (n) 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;";
- (o) 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;";
- (p) by the deletion of the definition of "mine";
- (q) by the substitution for the definition of "Minister" of the following definition:
- "**Minister**" means the Minister [of Minerals and Energy] responsible for mineral resources and energy;";
- (r) 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);";
- (s) 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);";

- (t) by the substitution for the definition of "prescribed" of the following definition:

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

- (u) 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;";

- (v) 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);";

- (w) by the deletion of the definition of "production";

- (x) by the insertion after the definition of " production" of the following definitions:

'**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);

'**Protection of Personal Information Act**' means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);";

- (y) 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;";

(z) 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);";

(zA) 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,]** to end consumers and any other activity incidental thereto, and **"reticulate", [and] "reticulating" and "reticulator"** have corresponding meanings;"

(zB) 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);";

(zC) 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;"

(zD) 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]**;"

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

" **'storage'** means the holding of gas **[as a service]** in fixed and mobile 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;";

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

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

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

(zH) 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;";

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

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

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

" **'trading'** means the sale of gas as a commodity by any person 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;";

- (zK) by the insertion after the definition of "trading" of the following definition:
- " **'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;"
- (zL) 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 and **'transmit'** and **'transmitting'** have corresponding meanings;"
- (zM) 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;"
- (zN) 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
- (zO) by the insertion after the definition of "uncommitted capacity" capacity of the following definition:

" 'unreasonable price' means a price that is discriminatory, predatory, or exclusionary in nature, and "price discrimination", "predatory price" and "exclusionary Act" would have the same meaning as per the definitions contained in sections 1 and 9(1) of the Competition Act."

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]** construction and operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities **[and the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction, re-gasification and trading services]**";

(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 persons in accordance with the BBBEE Act and any other relevant gas sector specific codes or requirements, as may be applicable from time to time;

(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; and

(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] ENERGY REGULATOR ".

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 registration conditions in accordance with section 21A(1), and review these in accordance with section 21(2) or section 21A(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 contemplated in section 28A (7), where the Energy Regulator is also empowered to exercise its powers and perform its functions under this Act and under any other statute in a coordinated and integrated manner;
- (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), enter into an agreement with any regulator, organ of state or

Government department, in order to coordinate and harmonise the performance of functions similar, or related, to those of the Energy Regulator, including concluding, pursuant to section 28A(9), 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, as contemplated in section 22, without unfair discrimination;
- (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) consult with the Minister concerning expropriation of land or any right in, or over, such land as is necessary 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 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) a 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**;

- (iv) a gas liquefaction facility; or
- (v) 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 paragraph:

"(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 after section 15 of the principal Act:

"Activities no longer requiring licensing"

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

Registration

15B. (1) A person undertaking any of the following activities must register the prescribed information, with the Energy Regulator—

- (a) the exportation or importation of gas;
- (b) an activity referred to in items 1, 2 and 5 of Schedule 1;
- (c) the purchasing of 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 as may be prescribed by the Energy Regulator.

(3) Any application for registration in terms of subsection (1), must be submitted in the 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 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 subsection:

"(4) 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, subject to subsection (4), 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 the 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);
- (f) by the substitution for paragraph (d) of the following paragraph:
"(c) may request such additional information as may be necessary to consider the application properly. [and]; and
- (g) 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 considers 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 interested and affected party may object to a licence application contemplated in section 16, but must do so within the period prescribed by the Minister and in the manner 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, within 30 days of receipt of the objection, 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 the objections as contemplated in section 18A (3); or

(c) after receiving the additional information contemplated in section 18(c), 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 provision 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 grant or refuse the licence and 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 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) to (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 gas transmission, storage, distribution, trading, liquefaction and re-gasification activities of vertically integrated companies must be managed separately with separate management, separate accounts and data and with no cross-subsidisation;

- (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 the 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 licensee 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) to (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;
- (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 possible 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, section 12A (2) and section 43A of the Competition Act 1998 (Act No. 89 of 1998);
- (q) **[an]** 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 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."

Insertion of section 21A in Act 48 of 2001

15. The following section is hereby inserted in the principal Act after section 21:

"Registration Conditions

21A. (1) The Energy Regulator may, in respect of any activity registered in terms of this Act, impose any condition that is demonstrably consistent with the nature and extent of the activity concerned and the fulfilment of one or more of the objects of this Act.

(2) The provisions of section 21(2) apply with changes necessitated by context in respect of persons aggrieved by any registration condition imposed under subsection (1)."

Substitution of section 22 of Act 48 of 2001

16. 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.

(1A) Nothing in this section may be construed as promoting non-adherence to the provisions of section 9(1)(a)(ii) of the Competition Act."

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

17. 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 approved by the Energy Regulator for the area of exclusivity.

(6) The Energy Regulator must undertake a periodic 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) must be based on the systematic methodology or methodologies developed 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 a profit or add a trading margin commensurate with the risk.

(5) A licensee may not charge a price in excess of the maximum price determined and approved by the Energy Regulator.”.

Substitution of section 23 of Act 48 of 2001

18. 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 period **[of] not exceeding 25 years [or such longer period as the Gas Regulator may determine].**

(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 unless approved by the Energy Regulator upon application.

Insertion of section 23A in Act 48 of 2001

19. The following section is hereby inserted in the principal Act after section 23:

"Registration term and non-transferability

23A. Registrations made under this Act are valid for the period stated in the registration certificate and no registrant may assign, cede or transfer its registration to another person.".

Amendment of section 24 of Act 48 of 2001

20. Section 24 of the principal Act is hereby amended—
(a) by the substitution for the heading of the following heading:

"Amendment of licence conditions";

(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 deletion in subsection (1) of paragraph (b);
- (d) 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.";

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

"(3) The Energy Regulator may proceed with the variation, suspension, removal or addition in accordance with subsection (1)(c) to (e) after providing the licensee an opportunity to be heard.

"(4) 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

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

"[Revocation of licence on application] 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 in the prescribed manner as contemplated in subsection (3), 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."

Insertion of section 25A in Act 48 of 2001

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

"Cancellation of registration

25A. (1) The Energy Regulator may cancel a registration in terms of this Act if—

(a) the registrant brings an application for the cancellation of registration;

(b) the registrant fails to comply with any condition of its registration 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 such compliance notice;

(c) the registrant repeatedly fails to comply with any condition of its registration;

(d) the registrant repeatedly contravenes the provisions of this Act; or

(e) no meaningful purpose can be discerned from the continued registration of any activity.

(2) The procedure to be followed in cancelling any registration is as prescribed.

(3) Any registration cancellation takes effect from the date of decision by the Energy Regulator, and no one may engage in a formerly registered activity after this date."

Substitution of section 26 of Act 48 of 2001

23. 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, on reasonable grounds, believes—

- (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 to 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 the 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 issued 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 giving notice to the person, 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) An administrative fine imposed in terms of this Act may not exceed the greater of—

(a) 10 per cent of the licensee's annual turnover during the preceding financial year; or

(b) R2 000 000, 00 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.

(7) For the purpose of this section, the annual turnover of a licensee at the time when an administrative fine is assessed, is the total

income of that licensee during the immediately preceding year, as determined in the prescribed manner by the Energy Regulator.

(8) 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.

(9) 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.

(10) 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 decision reviewed by a competent court in proceedings brought under the Promotion of Administrative Justice Act.

Substitution of section 27 of Act 48 of 2001

24. 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 having been launched or, if launched, until any such judicial review has been abandoned, struck off the relevant court roll or finally decided.

Repeal of section 28 of Act 48 of 2001

25. Section 28 of the principal Act is hereby repealed.

Insertion of sections 28A and 28B in Act 48 of 2001

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

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

28A. (1) The Minister may, by notice in the *Gazette*, after 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; and

- (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 the 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 the 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 are 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 are 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) In order to give effect to the determination referred to in subsection (1), the Minister is empowered to—

- (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 the 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 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) 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.

(9) No person may, subject to subsection (10), construct or operate a new transmission or re-gasification 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.

(10) The prohibition in subsection (9) 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.

Indicative licence conditions pursuant to a determination

28B. (1) A procurer of gas facilities or services pursuant to a determination under section 28A 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

27. The following section is hereby substituted for 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 on 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

28. 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, the Promotion of Personal Information Act, and any other applicable law such as the Competition Act, or in terms of an order of a High Court."

Substitution of section 30 of Act 48 of 2001

29. 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

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

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

31. (1) The **[Gas] Energy** Regulator must conduct investigations into complaints by—

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

(1A) Notwithstanding subsection (1), the Energy Regulator may at its own initiative conduct investigations if the conditions stipulated in subsection (1)(a) to (c) exist and a complaint has not been laid by a customer but the Energy Regulator is of the view that it warrants an investigation.

(2) Notwithstanding subsection (1) and (1A), 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 subsections (1) or (1A), 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."

Substitution of section 32 of Act 48 of 2001

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

"Expropriation of land [by Gas Regulator]

32. (1) In pursuit of the objects of this Act, the **[Gas Regulator]** State may expropriate land, or any right in, over₁ or in respect of land₁ on behalf of a licensee for any gas [transmission, storage, distribution,

liquefaction or re-gasification] facilities, 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 Regulator] State** 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, over₁ or in respect of₁ such land by agreement with the owner; and
- (b) the land or any right in, over₁ or in respect of₁ such land is reasonably required by a licensee for gas **[transmission, storage, distribution, liquefaction or re-gasification]** facilities which will enhance the Republic's gas infrastructure.

Insertion of section 32A in Act 48 of 2001

32. 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

33. 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

34. 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 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 proceedings must be conducted]** for expropriations;

(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;";

- (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;";

- (m) by the insertion in subsection (3) after paragraph (f) of the following paragraph:

"(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 liquefaction, re-gasification, 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 processing suspension and revocation of licences and in considering licence surrender applications;"

- (r) by the substitution in subsection (3) for paragraph (i)-of the following paragraph:

- "(i) the information to be provided with registrations and the form and manner in which registration must be lodged;
- (s) by the insertion in subsection (3) after paragraph (i) of the following paragraph:
- "(iA) the procedure to be followed in effecting registration cancellations;"
- (t) by the substitution in subsection (3) for paragraphs (j), (k) and (l) of the following paragraphs, respectively:
- (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, and enquiry into, 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
- (u) 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

35. 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 be 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) is 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 (j) is 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 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) The Energy Regulator may approach the High Court to make the consent order an order of court."

Exemptions

34C. (1) The Minister may, in consultation with the Energy Regulator and any other relevant Minister, 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 this Act."

Substitution of section 35 of Act 48 of 2001

36. 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

37. 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 item:

"5. Any person trading gas solely with an associate company."

Short title and commencement

38. This Act is called the Gas Amendment Act, 2023, and comes into operation on a date determined by the President by proclamation in the *Gazette*.