

REPUBLIC OF SOUTH AFRICA

GAS 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. 54206
of 24 February 2026)*
(The English text is the official text of the Bill)

(MINISTER OF ELECTRICITY AND ENERGY)

BILL

To repeal the Gas Act, 2001, 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:—

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DEFINITIONS AND OBJECTS**Definitions**

1.	In this Act, unless the context indicates otherwise—	
	“ applicant ” means a person who has submitted an application for a licence or registration in relation to any activity referred to in section 10 or 23 respectively;	35
	“ 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;	
	“ black people ” means black people as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);	
	“ Competition Act ” means the Competition Act, 1998 (Act No. 89 of 1998);	40
	“ 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);	
	“ customer ” means a person purchasing gas or purchasing transmission, storage, distribution, liquefaction, compression or re-gasification services;	
	“ 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 from 16 December to 15 January must not be taken into account;	45
	“ Department ” means the Department responsible for energy;	
	“ distribution ” means the transportation of gas, including transportation by pipeline, with a general operating pressure of more than 2 bar gauge and less than 15 bar gauge to an end consumer, or to reticulation systems, or to both, and any other activity incidental thereto, and “distribute”, “distributing” and “distributor” have corresponding meanings;	50
	“ distribution company ” means any person licenced to operate a gas distribution facility;	55

- “**eligible customer**” means a customer who meets the qualifying threshold prescribed by the Minister to buy gas directly from suppliers without the intervention of a distribution company for own use;
- “**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, 2004 (Act No. 40 of 2004); 5
- “**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 the factors listed in section 4(5);
- “**facility**” means all the necessary and incidental infrastructure associated with the activities referred to in section 10; 10
- “**gas**” means all hydrocarbon gases, including natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquefied natural gas, compressed natural gas, re-gasified liquefied natural gas, re-gasified liquefied petroleum gas or any combination thereof and any low-carbon and renewable gases that may be prescribed by the Minister; 15
- “**gas master plan**” means an indicative, forward-looking plan for gas sources, supply and demand, compiled in accordance with the provisions of section 27, in order to reflect national policy on gas infrastructure planning;
- “**group of companies**” has the meaning assigned to it in the Companies Act, 2008 (Act No. 71 of 2008); 20
- “**integrated energy project**” means a project provided for under a determination made by the Minister in terms of section 29(1);
- “**licensee**” means any person holding a licence granted by the Energy Regulator in terms of this Act; 25
- “**liquefaction**” means converting gas from a gaseous state to a liquid state, and “liquefy”, “liquefied” and “liquefying” have corresponding meanings;
- “**maximum price**” means a price that is determined and regulated by the Energy Regulator in terms of section 4 of the Act;
- “**Minister**” means the Minister responsible for energy; 30
- “**prescribed**” means prescribed by regulation in terms of this Act;
- “**price**” means the monetary charge for gas to a customer;
- “**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; 35
- “**re-gasification**” means converting liquefied 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;
- “**regulation**” means a regulation made by the Minister in terms of section 36(1); 40
- “**reticulation**” means the transportation of gas by pipelines with a general operating pressure of no more than 2 bar gauge to end consumers and any other activity incidental thereto, and “reticulate”, “reticulating” and “reticulator” have corresponding meanings;
- “**rule**” means a rule made by the Energy Regulator in terms of section 37; 45
- “**service**” means any service by a licensee to a third party, including a company in the same group of companies, relating to the transmission, distribution, storage, liquefaction or re-gasification of gas;
- “**specification**” means the chemical and physical composition, calorific values and Wobbe Index of the gas that conforms to recognised international standards; 50
- “**storage**” means the holding of gas in fixed and mobile infrastructure and any other activity incidental thereto, but excludes the storage of gas—
- (a) for own use;
 - (b) at a transmission, distribution, liquefaction or upstream pipeline; or
 - (c) where the primary purpose of such storage is for gas to be used in a 55 production, operation or in the manufacture of synthetic or artificial gas;
- “**tariff**” means the monetary charge for providing gas services to any customer;
- “**this Act**” means the Gas Act, 2026 and includes the regulations and rules made under this Act;
- “**trading**” means the sale of gas as a commodity or any activity incidental thereto by any person licenced, including the construction and operation of trading infrastructure, but excluding the construction and operation of transmission, storage, distribution, liquefaction or re-gasification facilities; 60

- “**trading infrastructure**” includes all fixed and mobile infrastructure used in the 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;
- “**transmission**” means transport of gas by pipeline, at a general operating pressure of 15 bar gauge or more, excluding pipelines regulated under the upstream sector; and
- “**uncommitted capacity**” means such capacity determined by the Energy Regulator in a gas transmission, storage, distribution, liquefaction or re-gasification facility, as is not required to meet contractual obligations.

Objects of Act 10

2. The objects of this Act are to—
- (a) promote the efficient, effective, sustainable and orderly development and operation of gas transmission, storage, distribution, liquefaction and re-gasification facilities;
 - (b) promote the provision of efficient, effective and sustainable gas transmission, storage, distribution, liquefaction and re-gasification services; 15
 - (c) promote competitive and sustainable trade in gas;
 - (d) facilitate investment in the gas industry;
 - (e) promote the safe, efficient, economic and environmentally responsible transmission, storage, distribution, liquefaction and re-gasification of gas; 20
 - (f) facilitate the development of integrated energy projects, including gas-to-power projects;
 - (g) facilitate the development of gas markets and gas facilities;
 - (h) promote companies in the gas industry that are owned or controlled by black people in accordance with the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), and any other relevant gas sector specific codes or requirements, as may be applicable from time to time; 25
 - (i) promote the equitable provision of gas transmission, storage, distribution, liquefaction and re-gasification services in the public interest;
 - (j) promote skills development and employment equity in the gas industry; 30
 - (k) facilitate gas trade between the Republic and other countries;
 - (l) promote access to gas in an affordable and safe manner; and
 - (m) promote the supply of gas.

CHAPTER 2

ENERGY REGULATOR 35

Functions of Energy Regulator

3. The Energy Regulator must, in accordance with this Act—
- (a) consider and decide on applications for licences in respect of the activities regulated by this Act and may issue licences for— 40
 - (i) the construction or conversion of a facility referred to in section 10(1)(a);
 - (ii) the operation of a facility referred to in section 10(1)(b); and
 - (iii) trading in gas;
 - (b) impose licence conditions in accordance with section 18(1) or 18(2) and registration conditions in accordance with section 24(1), and review these in accordance with section 18(3) or section 24(2); 45
 - (c) regulate third party access to gas facilities;
 - (d) consider and decide on applications for exclusivity as contemplated in section 17;
 - (e) regulate, facilitate and promote participation in the gas industry in accordance with relevant government policy and plans and ensure adherence by licensees and persons contemplated in section 23 with their statutory obligations under this Act; 50
 - (f) integrate decision-making in respect of integrated energy projects contemplated in section 29(1), 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 with other relevant regulators or organs of state; 55

- (g) gather information relating to the transmission, storage, distribution, trading, liquefaction and re-gasification of gas and subject to section 7, publish or make available such information;
- (h) issue compliance notice and if necessary, take any action in terms of section 31 and revoke a licence in terms of section 22; 5
- (i) receive complaints, undertake investigations and inspections and enquire 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, organs of state and other relevant bodies and institutions regarding any matter contemplated in this Act; 10
- (k) if necessary to achieve one or more of the objects set out in section 2, enter into an agreement with any regulator or organ of state, in order to coordinate and harmonise the performance of functions similar to or related to those of the Energy Regulator;
- (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 relevant government policy and plans; 15
- (m) regulate tariffs and maximum prices in accordance with the requirements of section 4; 20
- (n) ensure that tariffs and maximum prices are applied, as contemplated in section 30, 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 7;
- (p) strengthen compliance with this Act through monitoring and enforcement; 25
- (q) perform any activity incidental to the performance of its functions;
- (r) carry out its functions with regard to the objects set out in section 2;
- (s) make rules in accordance with section 37; and
- (t) exercise any power or perform any duty conferred or imposed on it under this Act or any other applicable law. 30

Regulation of tariff and maximum prices

- 4. (1) The Energy Regulator must regulate—
 - (a) tariffs; and
 - (b) where there is inadequate competition, maximum prices that may be charged by a licensee. 35
- (2) A tariff or maximum price contemplated in subsection (1) must be based on the methodology, contemplated in section 37, developed by the Energy Regulator which must promote—
 - (a) the development of a gas industry; and
 - (b) access to affordable gas in the Republic. 40
- (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. 45
- (4) The maximum price regulated by the Energy Regulator must enable the licensee to—
 - (a) recover its prudently and efficiently incurred investment and operational costs; and
 - (b) make a profit or add a trading margin commensurate with the risk. 50
- (5) A licensee may not charge a price in excess of the maximum price determined and approved by the Energy Regulator, 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 profits history; 55
 - (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; 60

- (d) the length of time the prices have been charged at that level; and
- (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. 5

Appointment of inspectors

- 5. (1) The Energy Regulator may—
 - (a) designate as an inspector, any staff member of the Energy Regulator; and
 - (b) at any time withdraw a designation made in terms of paragraph (a). 10
- (2) When designating a person as an inspector, the Energy Regulator must determine whether the person concerned is designated for the enforcement of this Act or only specific provisions of this Act.
- (3) A prescribed identity card must be issued to each person designated as an inspector. 15
- (4) When exercising any powers or performing any duties in terms of this Act an inspector must, on demand by a member of the public, produce the identity card referred to in subsection (3).
- (5) The Energy Regulator may, by rule, determine—
 - (a) qualification criteria for inspectors; 20
 - (b) appropriate and comprehensive training programmes that must be completed by inspectors in order to ensure that they are fully equipped in order to perform their functions in terms of the Act; and
 - (c) a code of conduct applicable to all designated inspectors.

Powers of entry, search and seizure 25

- 6. (1) An inspector—
 - (a) must monitor and enforce compliance with this Act for which he or she has been designated;
 - (b) may at all reasonable times enter any property on which an activity requiring a licence in terms of section 10(1) or an activity that requires registration in terms of section 23 is taking place and inspect any facility, equipment, machinery, book, account or other applicable document; 30
 - (c) require any person to furnish the inspector with such information as may be necessary for the purpose of ascertaining compliance with this Act or a term or condition of a licence, authorisation or any instrument issued under this Act; and 35
 - (d) may investigate any act or omission in respect of which there is a reasonable suspicion that it might constitute—
 - (i) an offence in terms of this Act;
 - (ii) a breach of this Act; or 40
 - (iii) a breach of a term or condition of a licence, authorisation or other instrument issued in terms of this Act.
- (2) An inspector—
 - (a) must carry out his or her duties and exercise his or her powers—
 - (i) with strict regard for decency and order and with regard to each person's right to dignity, freedom, security and privacy; 45
 - (ii) in accordance with any instructions issued by the Energy Regulator; and
 - (iii) subject to any limitations and in accordance with any procedures that may be determined by the Energy Regulator by rule; 50
 - (b) may be accompanied by an interpreter or any other person whose assistance may reasonably be required; and
 - (c) must exercise his or her powers in a way that minimises any damage to, loss or deterioration of any premises or thing.
- (3) An inspector may enter a private dwelling for inspection as contemplated in subsection (1) only—
 - (a) with the consent of the owner or occupier of such private dwelling; or
 - (b) if authorised to do so by a warrant issued in terms of subsection (4). 55
- (4) The warrant contemplated in subsection (3) may be issued by a judge or a magistrate if it appears from written information, given by an inspector on oath or 60

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.

- (5) An inspector who removes any item from the property being searched must—
- (a) issue a receipt to the owner or person in control of the premises; and 5
 - (b) return the item as soon as practicable, after it has served the purpose for which it was removed.

(6) The Energy Regulator may require that the accuracy of any information furnished in terms of subsection (1)(c) be verified on oath or by way of a solemn declaration, as the case may be. 10

Information held and disclosed by Energy Regulator

7. (1) 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, except for the purposes of complying with, or enforcing, the provisions of this Act, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), or any other law, or in terms of an order of a High Court. 15

(2) But for purposes of complying with or enforcing this Act, the Promotion of Access to Information Act, 2000, the Protection of Personal Information Act, 2013, or any other law or in terms of an order of a High Court, the Energy Regulator may make public or disclose to any interested person information which is of a generic, non-confidential nature and which is not commercially sensitive and which may be of interest to any person contemplating the construction of a gas facility or the operation thereof or contemplating trading in gas. 20 25

Voluntary resolution of disputes by Energy Regulator

8. (1)(a) 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 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. 30

(b) When acting as a mediator or arbitrator, the Energy Regulator must issue a decision on the matter that is consistent with the provisions of this Act or any applicable licence conditions.

(2)(a) The Energy Regulator may, on request and with the written consent of the parties involved, appoint a person, suitable to the Energy Regulator and such parties, to act as mediator or arbitrator on behalf of the Energy Regulator in any matter contemplated in subsection (1). 35

(b) Any decision of a mediator or arbitrator so appointed must be regarded as being the decision of the Energy Regulator.

(3) Any decision taken by the Energy Regulator acting as mediator or arbitrator or by a mediator or arbitrator contemplated in subsection (2) is binding on the parties to the dispute. 40

Investigations by Energy Regulator

9. (1) The following parties may lodge complaints with the Energy Regulator—
- (a) customers with complaints relating to the supply of gas; 45
 - (b) customers with complaints relating to unreasonable or excessive prices or tariffs imposed by a licensee in collaboration with the relevant authorities;
 - (c) customers with complaints relating to unreasonable differences regarding the supply of gas or gas services by licensees; or
 - (d) any other person who has interest in the application of this Act. 50

(2) The Energy Regulator must conduct investigations into complaints referred to in subsection (1).

(3) A complaint contemplated in subsection (1) must be submitted within the period and in the form and manner determined by the Energy Regulator by rule and be accompanied by— 55

- (a) supporting relevant information; and

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

(4) Notwithstanding subsection (1), the Energy Regulator may on its own initiative conduct investigations in relation to the conditions stipulated in subsection (1)(a) to (c), in the event that a complaint has not been laid by a customer and if the Energy Regulator is of the view that an investigation is warranted. 5

(5) When conducting an investigation in relation to conditions stipulated in subsection (1)(a) to (c), the Energy Regulator may do so in cooperation with the Competition Commission.

(6) Notwithstanding subsections (1) and (4), the Energy Regulator may not conduct investigations into disputes concerning breach of contract between a licensee and an eligible customer. 10

(7) If the Energy Regulator finds, following an investigation contemplated in subsection (1) or (4), 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 31, require the licensee to refund any customer where the breach has resulted in an over-payment by the customer. 15

CHAPTER 3

GAS LICENSING AND REGISTRATION

Part A 20

Gas Licensing

Activities requiring licence

10. (1) No person may without a licence issued by the Energy Regulator—

- (a) construct—
 - (i) a gas transmission facility; 25
 - (ii) a gas storage facility;
 - (iii) a gas distribution facility;
 - (iv) a gas liquefaction facility;
 - (v) a re-gasification facility, or convert infrastructure into such facilities;
- (b) operate— 30
 - (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 facility; or 35
- (c) trade in gas.

(2) The Energy Regulator may, without prejudice to its powers under sections 31 and 37 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. 40

(3) Notwithstanding subsection (1), a person engaged in an activity referred to in Schedule 1 is not required to apply for or to hold a licence to engage in such activity, but a person engaged in an activity referred to in items 1 and 2 of that Schedule must register the activity as contemplated in section 23.

Activities no longer requiring licensing 45

11. The Minister may, after consultation with the Energy Regulator, by regulation, determine any activity contemplated in section 10(1) as an activity that no longer requires a licence, from the date set out in such determination.

Application for licence

12. (1) A person must make an application to the Energy Regulator for a licence to conduct an activity referred to in section 10. 50

(2) An application must be made in the form and manner determined by the Energy Regulator by rule, which form and manner may differentiate between the different types of gas facilities and services.

(3) Any application contemplated in subsection (1) must include—

- (a) the name, company number, if any, and principal place of business of the applicant; 5
- (b) particulars of the owners or shareholders of the applicant if the applicant is not a natural person;
- (c) documents demonstrating the administrative, financial and technical abilities of the applicant; 10
- (d) a description of the proposed facility to be constructed or operated, or the proposed trading to be conducted, including maps and diagrams where appropriate;
- (e) a general description of the type of customers to be served and the tariff or gas price policies applied; 15
- (f) the plans and ability of the applicant to comply with all applicable labour, health, safety and environmental legislation;
- (g) a detailed specification of the gas that will be traded under the licence; and
- (h) such other particulars as may be determined by the Energy Regulator by rule.

(4) The applicant may, in accordance with the Promotion of Access to Information Act, 2000, request confidential treatment of commercially sensitive information contained in an application and subject to concurrence by the Energy Regulator, such information may be withheld from publicly available copies of the application. 20

(5) If an applicant intends to undertake more than one of the activities set out in section 10(1) as part of the same development or project, the applicant may apply at the same time for separate licences which authorises some or all of the regulated activities applicable to such development or project and the Energy Regulator may, in such circumstances grant separate licences pursuant to section 16(5) in respect of such development or project. 25

Publication of notice of application for licence 30

13. (1) When an application is made for a licence as contemplated in section 12, the applicant must, subject to subsection (3), publish a notice of the application in the manner and for the period determined by the Energy Regulator by rule.

(2) The notice must state—

- (a) the name of the applicant; 35
- (b) the object of the application;
- (c) the place where the application will be available for inspection by any member of the public;
- (d) the period within which any objections to the issue of the licence may be lodged with the Energy Regulator; and 40
- (e) the address of the Energy Regulator where any objections may be lodged.

(3) The applicant may not publish notice of the application until the Energy Regulator has taken a decision on the request contemplated in section 12(4).

Objection to licence application

14. (1) A person whose rights may be materially and adversely affected, may lodge an objection with the Energy Regulator in respect of a licence application contemplated in section 12, following the publication of the information regarding the application in terms of section 13, within 30 days from the date of publication. 45

(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. 50

(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 determined by the Energy Regulator by rule.

Consideration of application by Energy Regulator

- 15.** (1) In considering an application for a licence in terms of this Act, the Energy Regulator—
- (a) may direct the applicant to alter the plans for the proposed construction of gas facilities or the proposed operation of a gas facility in order to comply with applicable health, safety or environmental legislation; and 5
 - (b) may request such additional information as may be necessary to consider the application properly.
- (2) The applicant must provide the Energy Regulator with such additional information, requested in terms of subsection (1)(b) within the period determined by the Energy Regulator by rule. 10
- (3) The Minister may, from time to time, identify and publish in the *Gazette* imperatives that must be considered by the Energy Regulator in the consideration of all licence applications contemplated in section 10.

Finalisation of application 15

- 16.** (1) The Energy Regulator must decide on an application contemplated in section 12 within 60 days—
- (a) after the expiration of the objection period determined in terms of section 14(1), 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 14(3); 20
 - (c) after receiving the additional information contemplated in section 15, if any, where this information is only received after the period contemplated in paragraph (a), or the response contemplated in paragraph (b), has been received, as the case may be; or 25
 - (d) whichever occurs last.
- (2) Without derogating from any other provision of this Act, the Energy Regulator must satisfy itself that granting a licence is not at variance with the objects of the Act and that the applicant has the necessary organisational, financial and technical abilities for the proper performance of the duties associated with the licence applied for. 30
- (3) The Energy Regulator must grant or refuse the licence application.
- (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 is made within five years of the date of issue of that construction licence, unless— 35
- (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 22(1)(d), which empowers 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 10(1). 40

Exclusivity

- 17.** (1) An applicant for a licence to construct a distribution facility within a particular geographic area or to supply 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. 45
- (2) In considering the request for exclusivity in terms of subsection (1), the Energy Regulator must consider— 50
- (a) the investment required to be made by the applicant in the distribution facility;
 - (b) the time required to recover this investment and to make a profit commensurate with the associated risk;
 - (c) the applicant's ability to supply gas to present and prospective customers at competitive prices and conditions; 55
 - (d) the impact on existing gas users, customers, licensees and eligible customers within the area; and

- (e) any other relevant considerations regarding the impact of the decision on the short, medium and long-term development of a gas industry in that geographic area and surrounding areas.
- (3) In deciding the request for exclusivity in terms of subsection (1), the Energy Regulator may— 5
 - (a) grant a period of exclusivity it considers appropriate; and
 - (b) impose specific licence conditions applicable to the exclusivity period.
- (4) An exclusivity that has been granted in terms of subsection (3)(a) may be withdrawn by the Energy Regulator where there is failure to comply with the conditions imposed in terms of subsection (3)(b). 10

Conditions of licence

- 18.** (1) The Energy Regulator may make any licence subject to conditions within the following framework:
- (a) 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; 15
 - (b) a licensee's obligation to provide information to the Energy Regulator about the arrangements regarding broad-based black economic empowerment in the licensee's activity as may be prescribed by the Minister and any other relevant legislation; 20
 - (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; 25
 - (d) third parties must, in the prescribed manner, have access on commercially reasonable terms to uncommitted capacity in a gas transmission, storage, distribution, liquefaction or re-gasification facility and interconnection, where appropriate; 30
 - (e) the tariffs and where there is inadequate competition, maximum gas prices regulated by the Energy Regulator for the licensee, subject to adjustment at intervals in the manner determined for licensing, or subject to adjustment, by the Energy Regulator following a review at the request of the licensee; 35
 - (f) exclusivity for distributors where appropriate, in accordance with the considerations contemplated in section 17; 35
 - (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 determined by the Energy Regulator; 40
 - (i) trading infrastructure to conform to any applicable norms and standards stipulated in the licence or determined 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 licenced activities, including the construction and operation, including maintenance of gas facilities and the provision of gas services; 45
 - (l) 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 may be granted an exclusive geographic area, but only for a particular range of specifications of gas prescribed by the Minister; 50
 - (m) a distributor may be granted the construction, operation and trading licences for its exclusive geographic area;
 - (n) the construction and operation licences may be exclusive for the period of validity of such licences and the trading licence may be exclusive for a period determined by the Energy Regulator; 55
 - (o) decommissioning of gas facilities on termination, abandonment or lapse of a licence, rehabilitation of affected land and funding for decommissioning and rehabilitation costs;
 - (p) 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 60

- environmental or health and safety perspective and reconnection as soon as reasonably possible without undue discrimination;
- (q) maximum gas prices determined by the Energy Regulator where there is inadequate competition as contemplated in Chapter 2, sections 12A(2) and 43A of the Competition Act, 1998; 5
 - (r) any advisory service with regard to the safe and efficient use, handling and storage of gas for customers to be provided by a trading licensee;
 - (s) licensees must maintain their facilities in a fully operative condition;
 - (t) all customers in a licenced distribution area, except eligible customers and reticulators, must purchase their gas from the distribution company licenced for that area; 10
 - (u) the time period within which gas facilities will become operational must be fixed;
 - (v) information to be provided to the Energy Regulator which is necessary for the Energy Regulator to perform its functions; and 15
 - (w) the construction, operation of gas facilities and trading in gas contemplated in paragraphs (h) and (i) must not be inconsistent with section 24(2) of the National Environmental Management Act, 1998 (Act No. 107 of 1998).
- (2) The Energy Regulator may impose any other licence conditions that may be required for the purpose of fulfilling one or more of the objects of this Act. 20
- (3)(a) Any person aggrieved by a condition imposed by the Energy Regulator in terms of subsection (1) or (2) may, in the manner determined by the Energy Regulator by rule, apply to the Energy Regulator to have the condition reviewed.
- (b) If the aggrieved person is not the licensee, the Energy Regulator must inform the licensee of the application for review. 25
- (c) Whenever there is an application for review in terms of paragraph (a), the Energy Regulator may conduct an investigation and may for that purpose call witnesses to appear before it.
- (d) The Energy Regulator must decide on any application for review and must, in writing notify the aggrieved person or licensee of the outcome of such review within a reasonable time period. 30

Term of licence and non-transferability

- 19.** (1) Any licence issued in terms of this Act—
- (a) to operate a gas facility, to provide a gas service or trade in gas is valid for a period determined by the Energy Regulator and specified in the licence which period shall not exceed 25 years, taking into consideration such factors as may be relevant, including the applicant's requested duration of the licence and the time required to achieve a return on investment; 35
 - (b) to construct a gas facility, is valid for a period determined by the Energy Regulator and specified in the licence, 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; and 40
 - (c) comes into effect on the date stated in the licence as the effective date or on the date of issue if no effective date is stated.
- (2) A licensee may apply, in the form and manner determined by the Energy Regulator by rule, to renew a licence. 45
- (3) An application for renewal may be granted for such further period as the Energy Regulator may determine, but the Energy Regulator may set new or different licence conditions.
- (4) A licensee may not assign, cede or transfer its licence to another person unless approved by the Energy Regulator upon application. 50

Amendment of licence conditions

- 20.** (1) The Energy Regulator may vary, suspend or remove any licence conditions or may include additional conditions—
- (a) upon application by the licensee; 55
 - (b) upon non-compliance by a licensee with a licence condition;
 - (c) if it is necessary to achieve the purposes of this Act; or
 - (d) upon application by any affected party.

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

(3) The Energy Regulator may proceed with the variation, suspension, removal or addition in accordance with subsection (1)(b) to (d) after providing the licensee with an opportunity to make representations.

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Surrender of licence by licensee

21. (1) The licensee may surrender a licence on application to the Energy Regulator, if—

- (a) the licenced facility or activity is no longer required by the licensee;
- (b) the licenced 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 upon application, a new licence may be issued to such person in respect of the licenced facility or activity.

(2) Licensees must give the Energy Regulator at least 12 months' notice in writing of their intention to cease their licenced 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 surrendering a licence under subsection (1) is as determined by the Energy Regulator by rule.

(4) The Energy Regulator may accept the surrender of a licence if it is satisfied that the requirements for rehabilitation of land have been complied with in accordance with section 34.

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Revocation of licence

22. (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, winding up, business rescue or liquidation proceedings;
- (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 31(3) 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 21.

(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 struck off the relevant court roll or finally decided.

(3) The form and procedure to be followed in revoking a licence under subsection (1) is as determined by the Energy Regulator by rule.

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Part B

Gas Registration

Registration

23. (1) A person undertaking any of the following activities must, on application, register with the Energy Regulator—

- (a) the exportation or importation of gas;
- (b) an activity referred to in items 1 and 2 of Schedule 1; or
- (c) the purchasing of gas as an eligible customer.

(2) Any application for registration in terms of subsection (1), must be submitted—

- (a) in the form and manner;
- (b) with such information; and
- (c) accompanied by the registration fee,

as determined by the Energy Regulator by rule.

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(3) The Minister may, after consultation with the Energy Regulator, by regulation, determine any other activity as an activity which must be registered with the Energy Regulator.

Registration conditions

24. (1) The Energy Regulator may, in respect of any activity registered in terms of this Act, impose any condition that— 5

- (a) is demonstrably consistent with the nature and extent of the activity concerned;
- (b) fulfils one or more of the objects of this Act; and
- (c) complies with the norms and standards, and technical codes that may be applicable from time to time. 10

(2) The provisions of section 18(3) apply with the changes necessitated by the context in respect of persons aggrieved by any registration condition imposed under subsection (1).

Term of registration and non-transferability 15

25. 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.

Cancellation of registration

26. (1) The Energy Regulator may cancel a registration in terms of this Act if— 20

- (a) the registrant brings an application for the cancellation of registration; or
- (b) the registrant fails to comply with any condition of its registration or with the provisions of this Act, which failure is due to the non-compliance with a compliance notice in terms of section 31 and has not been rectified, following the issuance of such compliance notice. 25

(2) The procedure to be followed in applying for registration cancellation in terms of subsection (1)(a) and the cancelling of any registration, must be determined by the Energy Regulator by rule.

(3) Section 31(1), (2) and (3) shall be applicable when the Energy Regulator contemplates cancelling a registration in terms of subsection (1)(b). 30

(4) If a person to whom a compliance notice is issued does not comply with the notice, within the specified period of time, as directed in terms of section 31(3), the Energy Regulator may cancel the registration after—

- (a) giving the person to whom the compliance notice is addressed a reasonable opportunity to make representations to the Energy Regulator regarding why a registration should not be cancelled; and 35
- (b) considering any such representations.

(5) Section 31(5)(a) and (b) shall apply to a compliance notice issued.

(6) Any cancellation of registration takes effect from the date determined by the Energy Regulator. 40

CHAPTER 4

GAS MASTER PLAN AND NEW GAS FACILITIES, SERVICES OR GAS AND STRATEGIC INTEGRATED ENERGY PROJECTS

Gas master plan

27. (1) The Minister must— 45

- (a) develop a gas master plan; and
- (b) review and revise the gas master plan every five years.

(2) When developing and revising the gas master plan, the Minister must invite and consult with—

- (a) the Energy Regulator; 50
- (b) representatives of organised labour, business and community social partners nominated by the National Economic Development and Labour Council established in terms of section 2 of the of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994); and

- (c) other relevant government departments.
- (3) The Minister must, after consultations referred to in subsection (2), prepare a draft gas master plan for public comment.
- (4) The Minister must—
- (a) publish the draft gas master plan referred to in subsection (3) in the *Gazette* for public comment; 5
 - (b) duly consider the comments from the public;
 - (c) where considered necessary, amend or revise the gas master plan accordingly; and
 - (d) finalise and publish the gas master plan in the *Gazette*. 10
- (5) The gas master plan must address the following—
- (a) an assessment of the current state of the gas industry in the Republic, including the demand for gas, the availability of gas resources and the existing gas infrastructure; 15
 - (b) a statement of the strategic objectives for the development of the gas industry in the Republic, including the promotion of economic growth and job creation; 15
 - (c) a plan for the development of the gas industry in the Republic, including the development of new gas infrastructure, the expansion of existing gas infrastructure and the promotion of gas usage; 20
 - (d) various scenarios in respect of gas supply, demand and transportation and the estimated costs of those scenarios; 20
 - (e) the location and condition of the current infrastructure;
 - (f) the relevant facilities for the import or export of gas and the capacity of such facilities; 25
 - (g) the extent to which the various gas supply and demand scenarios may require the development, strengthening or upgrading of the systems contemplated in paragraph (f) and the cost of development, strengthening or upgrading of the said facilities; 25
 - (h) a plan for the management of the environmental impacts of the gas industry; 30
 - (i) a plan for the promotion of local content and community development in the gas industry, including the development of local skills and the support of local businesses; 30
 - (j) a plan for the empowerment and participation of black people; and
 - (k) a plan for the empowerment and participation of women, youth and people with disabilities. 35
- (6) The Energy Regulator and any licensee must, timeously provide such assistance and information as the Minister may require for the purpose of developing and reviewing the gas master plan.

New gas facilities, services or gas supply 40

- 28.** (1) The Minister may, in order to ensure the optimal availability and supply of gas and having regard to the gas master plan, by notice in the *Gazette*—
- (a) make a determination that new gas facilities, services or gas supply is required to achieve the objects of this Act; and
 - (b) make a determination that a new gas facility, service or gas supply must be established or acquired through a procedure which is fair, equitable, transparent, competitive and cost-effective. 45
- (2) The Minister may make a determination contemplated in subsection (1)—
- (a) for purposes of ensuring security of energy supply in the national interest; or
 - (b) in the event of an emergency. 50
- (3) The Minister may make a determination contemplated in subsection (1) after consultation with the Energy Regulator and the Minister of Finance.
- (4) A determination referred to in subsection (1) may include provisions dealing with—
- (a) the nature, type and extent of the required gas facility, services or gas supply; 55
 - (b) whether or not the person who constructs, manages, maintains or operates the required gas facility or service is required to be 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; or
 - (c) whether or not the person who supplies and trades in gas is required to be an organ of state, a private sector party including co-operatives in terms of the 60

Co-operatives Act or any form of association with juristic personality, or a combination of these.

(5) A fair, equitable, transparent, competitive and cost effective process as provided for in section 217 of the Constitution must be implemented where the Minister determines that a new gas facility, service or gas supply is not to be supplied, constructed, managed, maintained or operated by an organ of state. 5

(6) 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).

(7) Any organ of state determined as the buyer, user or procurer in any determination made by the Minister in terms of subsection (1), is bound by such determination. 10

(8) 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.

(9) 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. 15

(10) No person may, subject to subsection (11), construct or operate a new transmission or re-gasification facility, or expand such an existing facility without a ministerial determination issued in terms of this section, or a ministerial exemption issued in terms of section 39. 20

(11) The prohibition in subsection (10) only applies to—

(a) the construction or operation of a new transmission facility or re-gasification facility which is larger than a capacity threshold prescribed by the Minister; and

(b) the expansion of an existing transmission facility or re-gasification facility that is more than 10 per cent of the approved capacity or length in a year. 25

(12) The Director-General of the Department may, in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), undertake such management and development decisions and activities, including entering into contracts, as may be necessary to prepare and conduct any procurement process for the development, construction, commissioning and operation of a new gas facility or for the procurement of a new service or gas supply. 30

(13) In order to give effect to the determination referred to in subsection (1), the Minister is empowered to, subject to the Public Finance Management Act, 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 publicly owned gas facility and for the establishment of services or gas supply. 35

(14) In order to give effect to the determination referred to in subsection (1), the Director-General of the Department is empowered to— 40

(a) 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 any relevant procurement process in consultation with such organ of state; and

(b) 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. 45

Strategic integrated energy projects

29. (1) A determination contemplated in section 28 may also provide for the establishment of an integrated energy project which may include— 50

(a) one or more gas facilities;

(b) other interconnected or related energy infrastructure, installations, buildings, structures, systems, services or processes; or

(c) the procurement of gas and all infrastructure necessary for a project, in which case, all the provisions of section 28 must, with the necessary changes, apply to the determination. 55

(2) In order to implement a decision on determinations, the provisions of the Infrastructure Development Act, 2014 (Act No. 23 of 2014), are applicable to such determination.

CHAPTER 5
GENERAL PROVISIONS

Non-discrimination

- 30.** (1) A licensee may not unfairly discriminate between customers regarding access, tariffs, prices, conditions or service. 5
- (2) Notwithstanding subsection (1), a licensee may discriminate where there are objectively justifiable and identifiable differences, approved by the Energy Regulator 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 Energy Regulator. 10
- (3) This section must be interpreted in a manner consistent with the provisions in section 9(1)(a) of the Competition Act.

Compliance notice

- 31.** (1) The Energy Regulator may issue a compliance notice to any person whom on reasonable grounds has failed to— 15
- (a) comply with a provision of this Act; or
- (b) comply with any condition of a licence or a registration.
- (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; 20
- (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. 25
- (3) Should the Energy Regulator not accept the written reasons provided under subsection (2)(c), the compliance notice must be issued and direct the person to whom it is issued to take specified measures within a specified period of time to remedy a contravention, breach or failure, in order to comply with this Act, or a licence or registration conditions. 30
- (4) If the Energy Regulator must issue a compliance notice to a licensee under subsection (1), it may also decide to suspend the licence subject to directives issued in terms of subsection (3), in which circumstances the compliance notice must also contain details of the Energy Regulator's decision to suspend the licence.
- (5) 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— 35
- (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. 40

Administrative fines

- 32.** (1) The Energy Regulator may impose an administrative fine on a licensee to whom a compliance notice is issued and who does not comply with the notice within the specified period of time as directed in terms of section 31(3).
- (2) The Energy Regulator may impose an administrative fine on that person only after— 45
- (a) giving the person a reasonable opportunity to make representations to the Energy Regulator regarding why an administrative fine should not be imposed; and
- (b) considering any such representations. 50
- (3) An administrative fine imposed must be calculated from the date after the day of expiry of the time period specified in terms of section 31(3) and may not exceed the greater of—
- (a) 10 per cent of the licensee's annual turnover during the immediate preceding financial year; or 55

(b) R2 000 000, 00 per day for each day on which the non-compliance continues or such higher amount as may be prescribed by the Minister from time to time in order to counter the effect of inflation.

(4) 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 manner determined by the Energy Regulator by rule. 5

(5) When imposing an administrative fine, the Energy Regulator must consider the following factors—

- (a) the nature, duration, severity, gravity and extent of the non-compliance; 10
- (b) any loss to, or damage suffered by any person as a result of the non-compliance;
- (c) the behaviour of the person who failed to comply;
- (d) market circumstances in which the non-compliance took place;
- (e) the degree to which the person has cooperated with the Energy Regulator; and 15
- (f) whether the person has previously been found to be in contravention of this Act.

Expropriation of land

33. The Minister, in consultation with the Minister responsible for the administration of the Expropriation Act, 2024 (Act No. 13 of 2024), may expropriate land or any right in, over or in respect of land, for any gas facilities for a public purpose or in the interest of the public, in terms of section 25 of the Constitution and the Expropriation Act. 20

Environment and rehabilitation of land

34. (1) The principles set out in section 2 of the National Environmental Management Act, 1998, serve as guidelines for the interpretation, administration and implementation of this Act. 25

(2) The principles referred to in subsection (1) apply to all decisions and actions taken under this Act.

(3) Without derogating from sections 21, 22 and 26—

- (a) a licensee who surrenders a licence; 30
- (b) a licensee whose licence is revoked; or
- (c) a registrant whose registration is cancelled,

must comply with the applicable laws relating to the environment including damage to and pollution of the environment and the rehabilitation of land.

Rights of licensee in respect of premises or land belonging to others 35

35. (1) Subject to subsection (2), a licensee may lay and construct pipes for the distribution of gas under, over or along, any 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.

(2) A licensee may only exercise its rights in terms of subsection (1) to the extent necessary to carry on its licenced activities and must, in doing so, comply with all applicable laws. 40

(3) Before undertaking an activity as contemplated in subsection (1), a licensee must consult and coordinate with the municipality in whose area of jurisdiction the street or road in question is situated.

(4) A licensee must exercise the power contemplated in subsection (1)— 45

- (a) in accordance with a route and in terms of specifications approved by the municipality concerned;
- (b) under the supervision of the municipality concerned; and
- (c) within a reasonable time.

(5) Any pipe, meter, fitting, work or apparatus belonging to a licensee and lawfully placed or installed above or under any land or upon any premises not in the licensee's possession, remain the property of and may be removed by such licensee. 50

(6) A licensee must repair any damage caused, or reimburse the municipality for any damaged caused to a road or street.

(7) Nothing in this section must be construed as relieving a licensee from any liability for any loss or damage caused by its negligence. 55

Regulations

36. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) ensuring fair administrative action by the Energy Regulator in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and any other applicable legislation; 5
 - (b) criteria for distribution;
 - (c) activities that no longer require a licence;
 - (d) activities which must be registered under this Act;
 - (e) setting qualifying thresholds and other requirements that must be met by a person in order to qualify as an eligible customer; 10
 - (f) 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;
 - (g) the determination of gas specifications; 15
 - (h) third party access and interconnection, which 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;
 - (i) the procedure to be followed and fees to be paid in mediation and arbitration proceedings; 20
 - (j) the rendering of information to the Energy Regulator;
 - (k) tariff and maximum price regulation procedures and principles;
 - (l) mechanisms to promote broad-based black economic empowerment;
 - (m) facilitation of cross border gas infrastructure; and 25
 - (n) generally any other ancillary or incidental administrative or procedural matter that it is necessary to prescribe, for the proper implementation or administration of this Act.
- (2) Before promulgating the regulations contemplated in subsection (1), the Minister must— 30
- (a) consult with the Energy Regulator;
 - (b) invite public comments on such regulations; and
 - (c) duly consider the comments from the Energy Regulator and the public.

Rules by Energy Regulator

37. The Energy Regulator may make rules regarding— 35
- (a) the procedures to be followed at meetings of the Energy Regulator;
 - (b) the keeping of records by the Energy Regulator;
 - (c) the form, manner and contents of licence applications;
 - (d) the publishing of licence applications and contents thereof;
 - (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 response thereto; 40
 - (f) the period within which the additional information by the applicant must be provided;
 - (g) the procedure to be followed in considering licence applications; 45
 - (h) the form, manner and content of third party access requests;
 - (i) the methodology for determining a tariff or maximum prices;
 - (j) the methodology for determining uncommitted capacity, including which facilities may be exempted and the publishing of information relating to uncommitted capacity by the holders of transmission, storage, distribution, liquefaction or re-gasification licences and the publishing of prices for gas supplied to customers other than eligible customers by the holders of trading licences; 50
 - (k) 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; 55
 - (l) norms and standards applicable to the construction and operation of any gas facilities and trading infrastructure and the provision of gas services;
 - (m) the procedure to be followed in the variation, suspension, addition or removal of licence conditions; 60

- (n) the procedure to be followed in the processing, suspension and revocation of licences and in considering licence surrender applications;
- (o) the information to be provided with an application for registrations, applicable registration fees and the form and manner in which registration must be lodged; 5
- (p) the procedure to be followed for applying and effecting cancellation of registration;
- (q) the form, manner and period for lodging complaints and the procedures to be followed in investigations, including the calling of witnesses, administering of oaths or affirmations and the payment of witness fees; 10
- (r) the inspection of and enquiry into the construction and operation of any gas facility, or the provision of any gas services or trading in gas;
- (s) consultation with interested and affected parties;
- (t) qualification criteria for inspectors;
- (u) training for inspectors; and 15
- (v) a code of conduct applicable to all designated inspectors.

Offences

- 38.** (1) A person commits an offence if the person—
- (a) contravenes section 10(1) and 23(1);
 - (b) fails to pay an administrative fine imposed in terms of section 32(2); 20
 - (c) fails to furnish the information contemplated in section 23, or knowingly furnishes false or incorrect information in that regard;
 - (d) fails or refuses to furnish the information contemplated in section 6(1)(c), 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; 25
 - (f) does anything calculated to improperly influence any member or personnel of the Energy Regulator concerning any matter connected with an investigation; or
 - (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. 30
- (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 subsection (1)(c) to (g) is liable to a fine or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment. 35

Exemptions

- 39.** (1) The Minister may, in consultation with the Energy Regulator and any other relevant Minister, by notice in the *Gazette*, identify activities or classes of activities that may be exempted from compliance with this Act, if it is likely to— 40
- (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. 45

Repeal of law and savings

- 40.** (1) The Gas Act, 2001 (Act No. 48 of 2001), is hereby repealed. 50
- (2) Anything done by the Energy Regulator in terms of the Gas Act, 2001 prior to the commencement of this Act and which may validly be done by the Energy Regulator, is deemed to have been done in terms of this Act.
- (3) Any licence issued in terms of the Gas Act, 2001 remains valid for the term of licence. 55

Short title and commencement

41. This Act is called the Gas Act, 2026, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

EXEMPTION FROM OBLIGATION TO APPLY FOR AND HOLD A LICENCE

(Section 10(3))

1. Any person engaged in the transmission or distribution of gas for that person's exclusive use.
2. Any biogas projects not connected to a transmission or distribution facility.
3. Any person engaged in the reticulation of gas and any trading activity by a reticulator.

MEMORANDUM ON OBJECTS OF THE GAS BILL, 2026

1. BACKGROUND

The Gas Bill, 2026 (“the Bill”) proposes to repeal the Gas Act, 2001 (Act No. 48 of 2001) (“the Act”). The Bill seeks to repeal the Act to enhance compliance monitoring and enforcement provisions of the Act, address loopholes, omissions and other challenges experienced in the process of implementing and enforcing the Act. Amongst the gaps identified and addressed through the Bill is the inclusion of new technologies such as liquefied natural gas (“LNG”) and any low-carbon and renewable gases.

2. OBJECTS OF BILL

The Bill seeks to—

- align the legislative framework with the most recent technological developments in the field of gas transportation and storage;
- address challenges emanating from the implementation and enforcement of the Gas Act;
- provide for the promotion of the orderly development of the gas industry;
- enhance the national regulatory framework;
- promote broad-based black economic empowerment;
- provide for socio-economic and environmentally sustainable development;
- provide for new developments and changing technologies in the gas sector;
- facilitate gas infrastructure development and investment;
- provide for cooperation between the private and public sectors; and
- strengthen enforcement and improve compliance.

3. OVERVIEW OF BILL

3.1 Clause 1: Definitions

The proposed insertion of certain definitions such as “excessive price”, “facility”, “gas master plan”, “integrated energy project”, “trading” and “trading infrastructure” are intended to provide meaning and introduce new concepts in the Bill. The proposed amendments to certain definitions such as “customer”, “distribution”, “gas”, “re-gasification”, “reticulation”, “storage”, “tariff”, and “transmission” are intended to expand the scope of the Bill and eliminate ambiguities. The Bill proposes deletion of certain definitions such as “chief executive officer”, “gas regulator”, “mine”, “production”, and “storage company” that are not used in the Act and have become obsolete. The proposed amendments intend to assist with the interpretation of the Act through the deletion of obsolete definitions.

3.2 Clause 2: Objects of Act

3.2.1 Clause 2 intends to remove ambiguity and clarifies the responsibility of the Energy Regulator in relation to the promotion of safe and environmentally responsible gas facilities. Environmental issues are rendered by another institution, and the Energy Regulator has no capacity to ensure compliance and enforcement in this area. There is a need to ensure national energy security through the Bill. The Act does not empower the Minister to prescribe tools and mechanisms for determinations. This is intended to promote and facilitate integrated energy projects including the gas-to-power projects, ensuring the security of energy supply. Section 2(*h*) is a consequential amendment intended to align the Bill with the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

3.2.2 Clause 2 intends to expand the scope of the Act and clarify responsibilities, and the insertion of new clauses 2(*b*), 2(*c*), 2(*f*), 2(*g*),

and 2(m) is intended to provide new concepts to facilitate energy security.

3.3 **Clause 3: Functions of Energy Regulator**

Clause 3 of the Bill is intended to expand the scope and responsibilities of the Energy Regulator. The Act only empowers the Energy Regulator to monitor and approve tariffs and if necessary, regulate transmission and storage tariffs, with the exclusion of the distribution facility. The Bill now empowers it to set, monitor, approve and regulate tariffs and prices. Clause 3(b) expands the functions of the Energy Regulator to impose conditions on the registrable activities. The Act does not empower the Energy Regulator to regulate the registration regime, so it could not function effectively and efficiently. The provisions in clause 3 are intended to empower and strengthen the Energy Regulator to monitor and enforce compliance with the Act.

3.4 **Clause 4: Regulation of tariff and maximum prices**

Clause 4 intends to regulate gas prices and tariffs applicable to licences. The Act confers no statutory mandate upon the Energy Regulator to set and monitor prices, but only a limited approval and regulatory mandate. The Act requires the Energy Regulator to monitor, approve and if necessary, regulate transmission and storage tariffs, no statutory provision empowers it to set these tariffs and it also has no statutory mandate to set, monitor, approve and regulate distribution tariffs. This results in non-transparency in pricing, which consequently leaves the industry or customers exposed to higher gas prices. It could lead to excessively high distribution tariffs which could also impact final prices. The proposed clause 4 empowers the Energy Regulator to set, regulate and monitor prices in the absence of a competitive market.

3.5 **Clause 5: Appointment of inspectors**

The Act restricts enforcement and information gathering mechanism in relation to persons or facilities on premises of persons other than licensees. The Act poses restrictions on the Energy Regulator's regulatory function to gather information relating to gas facilities, since the site inspections constitute one of the methods by which the Energy Regulator may also gather information relating to gas production or from persons registered or that ought to be registered. Through site inspections, the Energy Regulator could also determine if an unlicensed person is engaged in any of the activities requiring a licence. The Act does not empower the Energy Regulator to enter any unlicensed facility. The proposed provision in the Bill empowers entry to such facility. The Bill provides for entry onto premises on which an activity that ought to be licenced or an activity that is registered, or ought to be registered is taking place and conduct the necessary inspections thereon in order to give the Energy Regulator the power to monitor non-compliances.

3.6 **Clause 6: Powers of entry, search and seizure**

Clause 6 of the Bill is intended to provide for the functions and duties of the inspectors to monitor and enforce compliance with the Bill. It also provides procedural aspects on how to enter any property on which an activity requiring a licence or registration is taking place.

3.7 **Clause 7: Information held and disclosed by Energy Regulator**

The Act does not provide for the manner in which the Energy Regulator deals with confidential information at its disposal. The Bill proposes the insertion of section 7 to deal with the handling of confidential information by the Energy Regulator in accordance with any other applicable legislation.

3.8 **Clause 8: Voluntary resolution of disputes by Energy Regulator**

Clause 8 of the Bill is intended to empower the Energy Regulator to resolve disputes through mediation or arbitration, with the written consent of the parties to the dispute, only in relation to matters concerning the trading of gas or the rendering of services.

3.9 **Clause 9: Investigations by Energy Regulator**

The Act only empowers the Energy Regulator to conduct investigations as a result of complaints by customers. The Bill enhances the provisions of the Act by empowering the Energy Regulator to conduct investigations on its own initiative. Clause 9(1)(d) intends to empower the Energy Regulator to investigate complaints by any other person who has interest in the application of the Bill. Clause 9(5) intends to empower the Energy Regulator to conduct investigations in cooperation with the Competition Commission.

3.10 **Clause 10: Activities requiring licence**

Clause 10 of the Bill mainly seeks to add the word “gas” and “facility” to all licensable activities, to clarify the context within which the Bill applies to them, to provide for a distinction between a licensable facility or service and to aid interpretation by what is meant by “gas” and “facility”. This clause further seeks to ensure that the discussion with the Energy Regulator of any planned activities that require a licence is not done after an application for a licence has been lodged. Clause 10(1)(a) and (b) is intended to clarify the scope of the Bill in terms of licenced facilities, and to eliminate ambiguity.

3.11 **Clause 11: Activities no longer requiring licensing**

In terms of the clause 11, the Minister may declare certain activities not to be licenced. Clause 11 is intended to eliminate red tape by empowering the Minister with tools to declare certain activities to be registrable activities in order to achieve security of supply when the need arises.

3.12 **Clause 12: Application for licence**

Clause 12 of the Bill intends to provide the applicant with an opportunity to request the Energy Regulator to treat their commercially sensitive information contained in an application for a licence as confidential and not publicly disclose such information in accordance with the Promotion of Access to Information Act, 2000. This provision may have unintended consequences where commercially sensitive information of an applicant may be disclosed.

3.13 **Clause 13: Publication of notice of application for licence**

Clause 13(1) intends to integrate the powers of the Energy Regulator in prescribing the manner and the period to publish a notice of the application for licence. Clause 13(3) intends to clarify that the applicant must publish a notice of application only after the Energy Regulator is satisfied that the application meets the requirements.

3.14 **Clause 14: Objection to licence application**

Clause 14 provides an opportunity to a person whose rights may be materially and adversely affected to submit their objections on the proposed activity. Clause 14 requires the Energy Regulator to furnish the applicant with received objections and allows the applicant to respond thereto within specified timelines. This is intended to improve the turnaround times for consideration and finalisation of applications. The Bill proposes the insertion of a new clause 14 which deals with objections to licence applications. This clause is mainly intended to inform the public about licence applications and to

facilitate a democratic and inclusive decision-making processes by the Energy Regulator.

3.15 Clause 15: Consideration of application by Energy Regulator

Clause 15(1) intends to expand the scope in which the Energy Regulator may consider an application for a licence, which includes the operation of gas facilities. Clause 15(2) intends to empower the Energy Regulator to prescribe the period within which the additional information may be submitted by the applicant.

3.16 Clause 16: Finalisation of application

Clause 16 requires the Energy Regulator to decide and finalise the application for a licence within 60 days after the expiration of the objection period, if there are no objections received. Section 16(4) intends to ensure that if a licensee holds a construction licence, the Energy Regulator may issue an operation and trading licence for such gas facilities. The intention is to provide a guarantee to the construction licence holder to undertake operation in and trading of gas.

3.17 Clause 17: Exclusivity

The country does not have an established gas market and there is no notable infrastructure to support gas transportation and supply. Therefore, clause 17 proposes to regulate requests by licence applicants to the Energy Regulator to grant them exclusivity in respect of licences to construct a distribution facility within a particular geographic area, or to supply gas in a particular area. The proposed clause 17 is necessary to facilitate gas infrastructure development and investment by ensuring that an applicant for a licence to construct distribution facilities has sufficient comfort that it will receive a return on its investment. Furthermore, the right to exclusivity promotes the sustainable and orderly development of distribution infrastructure by limiting stranded assets that may result from duplicate infrastructure without sufficient demand to sustain such infrastructure.

3.18 Clause 18: Conditions of licence

Clause 18(1)(b) aligns the Bill with the Broad-Based Black Economic Act, 2003 (Act No. 53 of 2003). Clause 18(f) and 18(j) is intended to expand the scope of the Energy Regulator to impose conditions on licences granted with exclusive rights and to prohibit a licensee from charging unreasonable and excessive prices. The goal of imposing conditions is to address the risk posed by the right to exclusivity in the distribution area. The Bill further expands the scope of the Energy Regulator to accommodate new concepts that are introduced in the Bill, such as clause 17.

3.19 Clause 19: Term of licence and non-transferability

The principal Act fixes the licence validity period to a minimum of 25 years. However, some applicants prefer to apply for a period lesser than 25 years based on their financial and technical abilities. As a result of this prescribed minimum period of licence validity, the Energy Regulator cannot issue a licence to an activity for a lesser period. The Bill seeks to provide for an alternative scenario intended to enable the Energy Regulator to issue a licence to operate a gas facility, to provide a gas service or trade in gas for a lesser period. This affords the opportunity for an applicant to operate for a lesser period. The Bill further proposes flexibility in the construction by the insertion of section 19(1)(b) which empowers the Energy Regulator to determine the construction licence validity period, to avoid a construction of gas facilities to be subjected to a minimum of a 25-year validity period. Clause 19 is mainly intended to clarify a construction and operation licence validity period, and the conditions in which a licence can be renewed, ceded, or transferred.

3.20 **Clause 20: Amendment of licence conditions**

The principal Act restricts the Energy Regulator to amend licence conditions with the permission of the licensee, and this literally means that it is not open to the Energy Regulator to ever process the amendment of any licence condition without obtaining approval from the licensee concerned and that doing so would render the Energy Regulator's actions directly contradictory with its powers in terms of this clause. The Bill provides for licence conditions to be possibly amended by the Energy Regulator without the permission of the licensee. The insertion of clause 20(3) is intended to provide the licensee an opportunity to be heard prior to the Energy Regulator proceeding with the variation, suspension, removal or addition of licence conditions.

3.21 **Clause 21: Surrender of licence by licensee**

Clause 21 is aimed at clarifying when a licence may be surrendered following an application by the licensee. The proposed insertion of clause 21(4) is intended to empower the Energy Regulator to only accept the surrender of a licence if it is satisfied that rehabilitation of land has been fulfilled.

3.22 **Clause 22: Revocation of licence**

Clause 22 provides for the revocation of a licence by the Energy Regulator instead of a court. The Bill removes the requirement for the application by the Energy Regulator to the High Court for the revocation of licences. The proposed clause 22 is mainly aimed at listing the grounds on which the need to revoke any licence may be based. Therefore, the removal of the reference to a High Court application by the Energy Regulator is considered appropriate in the circumstances. The revocation of licence by a High Court is considered a lengthy and costly process. The proposed insertion of clause 22(3) intends to empower the Energy Regulator to prescribe the form and procedure to be followed in revoking a licence.

3.23 **Clause 23: Registration**

Clause 23 requires a person undertaking activities such as the exportation and importation of gas, to be registered with the Energy Regulator. The Bill proposes two main regimes for regulating gas activities, namely licensing and registration. In the licensing regime, the process of issuing licences could be very difficult to complete within a reasonable time. During the registration, unlike in the licensing regime, the process can be made as to the appropriateness, in terms of expediting the permit process. Therefore, the licensing process might become an obstacle in achieving the strategic objectives and if energy security is threatened. The proposed insertion of clause 23 is intended to eliminate red tape by empowering the Minister with tools to declare certain activities to be registrable activities in order to achieve security of supply when the need arises.

3.24 **Clause 24: Registration conditions**

Clause 24 authorises the Energy Regulator to impose conditions on registrable activities to strengthen enforcement and compliance in the registration regime.

3.25 **Clause 25: Term of registration and non-transferability**

The Bill proposes the insertion of clause 25 to ensure consistency with the registration framework, improve compliance by registrants and the reliability of registration information maintained by the Energy Regulator.

3.26 **Clause 26: Cancellation of registration**

The absence of statutory provisions in the Act regarding the cancellation of unwanted registrations only leaves the Energy Regulator with the option to go about it by way of judicial review under the principle of legality when the need arises. The disadvantage of this is that it may sometimes take much longer to finalise, and it could come at a cost that may be circumvented. The proposed insertion of clause 26 is intended to empower the Energy Regulator to cancel registered activities.

3.27 **Clause 27: Gas master plan**

The proposed clause 27 will give the Minister broad powers to compile a gas master plan. The gas master plan is envisaged to be a South African policy plan on how gas resources of the country will be managed. This provision intends to provide how the Minister will develop and review the gas master plan. The provision entails what aspects the gas master plan will contain and address. This clause provides guidance and a framework on when the Minister develops and revises the gas master plan.

3.28 **Clause 28: New gas facilities, services or gas supply**

The Act does not have empowering provisions for a centralised strategic planning regarding new gas facilities or services to facilitate the orderly development of gas infrastructure and supply of gas. Clause 28 empowers the Minister to determine that gas, gas facilities or services are needed. The proposed amendment confers such powers on the Minister as may be necessary or incidental to give effect to the determination. The purpose of the above proposed amendments is to create maximum flexibility in terms of potential structures or procurement models for the establishment of gas or gas infrastructure. The proposed insertion of clause 28 is mainly intended to empower the Minister to facilitate the orderly development of the transmission and regasification facilities aimed at increasing the importation and supply of gas in the country, to support energy security.

3.29 **Clause 29: Strategic integrated energy projects**

The determination may provide for the establishment of an integrated energy project. Such an integrated energy project may include one or more gas facilities, as well as, amongst others, other interconnected or related energy infrastructure necessary for the industrial use of gas and the development of gas projects. The proposed clause 29 intends to align the Bill to the development of gas infrastructure as contemplated in the Infrastructure Development Act, 2014 (Act No. 23 of 2014).

3.30 **Clause 30: Non-discrimination**

The proposed Clause 30 is mainly intended to address loopholes in the Act. The prohibition of discrimination in the Act applies to actions by licensees in favour of their related undertakings, including a company that is in a group of companies. This provision limits the application of the discrimination provisions to firms that are vertically integrated in the gas industry and therefore does not extend to unjustified discriminatory conduct by firms that are not vertically integrated in the industry. This results in a regulatory gap, which will serve to promote discriminatory behaviour. The insertion of clause 30(3) is intended to align the Bill with the Competition Act, 1998 (Act No. 89 of 1999).

3.31 **Clause 31: Compliance notice**

Clause 31 intends to close regulatory gaps in the legislative provisions to ensure that the licensee complies with the provisions of the Bill and it further elaborates how the Energy Regulator is expected to handle the compliance

notice. Clause 31 of the Bill provides for a process that empowers the Energy Regulator to implement measures to enforce non-compliances and provide the affected persons with an opportunity to address non-compliance.

3.32 Clause 32: Administrative fines

The Act provides for the imposition of an administrative fine at a maximum of R2 million per day. Clause 32(1) of the Bill proposes the imposition of an administrative fine not exceeding 10% of the licensee's annual turnover or R2 million per day for each day or such higher amount as may be prescribed by the Minister from time to time in order to counter the effect of inflation. The reason for this is to make provision for Small, Medium and Micro Enterprises which cannot afford an administrative fine of R2 million per day.

3.33 Clause 33: Expropriation of land

Clause 33 provides that the Minister may expropriate land or land rights in consultation with the responsible Minister for administration of the Expropriation Act, 2024. This section intends to align with the Minister's powers to expropriate land or any rights in, over or in respect of land with applicable legislation.

3.34 Clause 34: Environment and rehabilitation of land

Clause 34 deals with the rehabilitation of land in connection with licenced and registered activities in accordance with applicable legislation.

3.35 Clause 35: Rights of licensee in respect of premises or land belonging to others

Clause 35 authorises the municipality to grant rights to the licensee in respect of premises or land belonging to others in order to lay and construct pipes for distribution of gas and to conduct maintenance of the facility.

3.36 Clause 36: Regulations

3.36.1 The Minister's regulation-making powers are expanded to prescribe the procedures and principles applicable to third-party access, facilitation of cross-border gas infrastructure, broad-based black economic empowerment, tariffs and maximum price regulation and activities which must be registered.

3.36.2 Clause 36 is intended to expand the scope of the Bill in terms of prescribing the regulations by the Minister due to new concepts introduced in the Bill, such as the right to exclusivity in the distribution area and the strengthening of the registration regime.

3.37 Clause 37: Rules by Energy Regulator

The Energy Regulator's rule-making powers include prescribing the form, manner and content of third party access requests, the methodology for determining uncommitted capacity, the information to be provided with registrations and manner in which registrations must be lodged. The Energy Regulator may prescribe the form, manner and period for lodging complaints, the inspection of and enquiry into the provision of any gas services, the conditions under which an eligible customer may import or purchase gas from a supplier or trader and the period for submitting additional information by an applicant for a licence.

3.38 Clause 38: Offences

3.38.1 Clause 38 outlines the offences in the Bill. The Act does not penalise the failure to comply with the directive issued to cease engaging in an unlicensed activity and the failure to register the operation of an activity or to supply the information. The furnishing of incorrect information on the application is not penalised and/or has no adverse consequence on the applicant once the licence has been issued. Furthermore, failure to provide information or the wilful provision of incorrect information during an inspection in terms of the Act is not penalised. This results in the undermining of the Energy Regulator’s regulatory efforts by unlicensed persons.

3.38.2 The Bill seeks to punish the failure to comply with the directive issued, the failure to register the operation of an activity or to supply the information and the failure to provide the Energy Regulator with information. The wilful provision of incorrect information during an inspection by rendering it an offence on conviction, which offence may be punishable either by imprisonment or fine or both and set timelines for the institution of proceedings that could potentially lead to the imposition of such punishment.

3.39 Clause 39: Exemptions

Clause 39 empowers the Minister to issue exemptions from compliance with the Act. Clause 39 lists three grounds which may serve as a basis for the Minister to issue and publish an exemption from compliance with the Act. The proposed amendment is intended to safeguard the national security of the Republic, promote the national, strategic, or economic interests of the Republic and security of energy supply.

3.40 Clause 40: Repeal of law and savings

Clause 40 intends to provide for the repeal of the Act.

3.41 Clause 41: Short title and commencement

Clause 41 intends to provide for short title and commencement of the Act.

Schedule 1: Exemption from obligation to apply for and hold a licence

Schedule 1 includes provisions dealing with the insertion of distribution of gas for that person’s exclusive use as per item 1 and item 2 and the restriction of biogas projects not connected to a transmission or distribution facility in respect of exemptions from the obligation to apply for and hold a licence.

4. DEPARTMENTS OR BODIES CONSULTED

The Department consulted the Energy Regulator, the Competition Commission of South Africa, the National, Economic, Development and Labour Council (“NEDLAC”), the Office of the Presidency and the Office of the Chief State Law Adviser (“OCSLA”). The amendments proposed in the Bill were published in Government *Gazette* No. 50009 Notice No. 4257 of 19 January 2024 for public comments. Comments by interested and affected parties were considered. A series of consultations were undertaken with industry and other key sector stakeholders. Accordingly, the general public and institutions at large have been consulted in preparing the Bill.

5. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the State.

6. PARLIAMENTARY PROCEDURE

6.1 In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others*¹, (“Tongoane”), the Constitutional Court (“CC”) confirmed the test formulated in order to determine the classification of a Bill (“tagging test”). According to the CC, what matters for the purposes of tagging, is not the substance or purpose of the Bill, but rather whether the provisions of the Bill in “substantial measure” fall within a functional area listed in Schedule 4.²

6.2 In commenting on the “substantial measure test”, the CC made the following remarks:

“[60] **The test for tagging must be informed by its purpose.** Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. **The process is concerned with the question of how the Bill should be considered by the provinces and in the NCOP, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content. . . .**

[71] **On the other hand, the “substantial measure” test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces.** This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.

[72] To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3) (a)-(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.” (Our emphasis).

6.3 The phrase “substantial measure” is further defined as follows³:

“It is submitted that ‘substantial measure’ refers to the extent or degree to which a particular Bill deals with a matter of concurrent legislative competence as listed in Schedule 4. To put it differently, it refers to the extent of, or degree of impact of the particular Bill on provincial interests as listed in Schedule 4. **The impact or effect of the Bill on the interest of the provinces must be of substantial extent, degree or measure for it to be tagged as a section 76 Bill. . . .** what is important should be the cumulative or combined effect of the Bill rather than how individual provisions individually affect a particular concurrent matter. **Although the individual provisions will be considered, it is their cumulative or combined impact that is ultimately determinative of whether a particular Bill in substantial measure falls within a concurrent legislative competence of the two spheres of government.**” (Our emphasis).

6.4 As stated above, a Bill, the provisions of which in substantial measure fall within a functional area listed in Schedule 4 to the Constitution, must be classified as a section 76 Bill. In order to test whether the provisions of a Bill fall within a functional area listed in Schedule 4, the cumulative effect of all

¹2010 (6) SA 214 (CC).

²See *Tongoane* at paragraph 58.

³Mailula D, “Customary (Communal) Land Tenure in South Africa: Did Tongoane overlook or avoid the core issue?” *Constitutional Court Review*, Vol. 4, 2011 at page 89.

the provisions of the Bill must be taken into account in order to determine its impact on the provinces.

- 6.5 In Part B of Schedule 4 of the Constitution, “gas reticulation” is listed as an area of concurrent national and provincial competence, to the extent as set out in section 155(6)(a) and (7) of the Constitution. It is clear in our view, from the provisions of the Bill that the Bill does not only deal with gas reticulation, but also with “trading” in gas. The subject matter of “trade” is a functional area of concurrent national and provincial legislative competence in terms of Schedule 4, Part A of the Constitution. As such, the State Law Advisers are of the opinion that the Bill must be tagged as a section 76 Bill.
- 6.6 The State Law Advisers are also of the opinion that it is necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since the Bill deals with the expropriation of land and may impact land belonging to traditional communities. As such, we are of the view that the Bill pertains to customary law or the customs of traditional or Khoi-San communities as envisaged in section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act.

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