

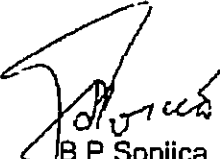
**DEPARTMENT OF MINERALS AND ENERGY
DEPARTEMENT VAN MINERALE EN ENERGIE**

No. R. 321

20 April 2007

GAS ACT, 2001**PIPED GAS REGULATIONS**

I, Buyelwa Patience Sonjica, Minister of Minerals and Energy hereby, under section 34(1), read with sections 1, 4(g), 21(1)(b), (d), (i), (h), (2)(a), 28(2), 32(2) and 34(2) of the Gas Act, 2001 (Act No. 48 of 2001) make the regulations in the Schedule.



B P Sonjica

Minister of Minerals and Energy

SCHEDULE**ARRANGEMENT OF REGULATIONS**

1. Definitions
2. Criteria for distribution
3. Eligible customers
4. Price regulation principles and procedures
5. Information regarding historically disadvantaged South Africans
6. Third party access to transmission pipelines
7. Third party access to storage facilities
8. Review of licence conditions
9. Registration information
10. Expropriations procedures
11. Rehabilitation of land
12. Fair administrative action
13. Determination of gas specifications
14. Mediation
15. Arbitration
16. Costs of mediation and arbitration
17. Rendering of information

Definitions

1. In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and unless the context indicates otherwise –

"administrative action" means administrative action as defined in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);

"backhauling" means the delivery of gas in a direction opposite to the aggregate physical flow of gas in the pipeline, typically delivery is upstream from the point of receipt;

"consumer" means a person who uses gas except for those who purchase gas from a reticulator;

"Gas Regulator" means the National Energy Regulator established by section 3 of the National Energy Regulator Act;

"linepacking" means increasing the quantities of gas in the pipeline for purpose of storage or as a buffer for continuous supply by increasing the pressure;

"liquefaction plant" means a plant for liquefaction activities and includes any equipment incidental thereto;

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

"Promotion of Access to Information Act" means the Promotion of Access to Information Act, 2000 (Act No.3 of 2000);

"re-gasification plant" means a plant for re-gasification activities and includes any equipment incidental thereto;

"related undertakings" means any undertaking in which a licensee owns a controlling shareholding, interest or similar right in subsidiaries, parent companies or joint-venture partnerships;

"subsidiary" means a subsidiary as contemplated in the Companies Act, 1973 (Act No. 61 of 1973);

"the Act" means the Gas Act, 2001 (Act No. 48 of 2001);

"the agreement" means the agreement defined in section 36 (1) of the Act.

Criteria for distribution

2. (1) The Gas Regulator must take the following criteria into account when determining the operating pressures that define the boundary between transmission and distribution pipelines:

- (a) More than five customer off-takes per kilometre may be considered as distribution; and
- (b) more than five branch pipelines per kilometre may be considered as distribution.

(2) Notwithstanding subregulation (1), branch pipelines connected to a transmission pipeline whose sole purpose is to serve eligible customers must be classified as transmission pipelines.

Eligible customers

3. (1) A customer who meets the qualifying threshold or requirements set out in subregulation (2) or (3) may qualify as an eligible customer.

(2) The qualifying thresholds for a customer who is located within a licensed distribution area are as follows:

- (a) For the first 5 years after the first delivery of gas sold and delivered on a commercial scale and on a continuous basis to the distribution licensee: 400 000 Giga Joules per annum;
- (b) for the next 5 years: 100 000 Giga Joules per annum; and
- (c) thereafter: 40 000 Giga Joules per annum.

(3) Customers who were receiving gas under a valid contract of supply in an area prior to-

- (a) the issue of a distribution license issued by the Gas Regulator; or
- (b) the issue of a reticulation permit or equivalent permit by the local authority,

may be eligible customers for as long as that contract remains valid.

(4) A vertically integrated gas company active in transmission and distribution may only supply from its transmission to an eligible customer in other distribution areas licensed to another entity if a third party would have mandatory access to the transmission pipeline for quantities of gas equivalent to the threshold of that eligible customer.

Price regulation principles and procedures

4. (1) While the agreement is in force, pricing matters that are not specifically provided for in the agreement are governed in accordance with this regulation.

(2) Gas traders whose maximum gas prices are calculated by Market Value Pricing in terms of the agreement must inform their customers of the elements used to calculate their maximum gas price and of-

- (a) the alternative fuel available;
- (b) the operating costs for the alternative fuel and for gas; and

- (c) the Net Present Value for operating cost of the alternative fuel and the operating cost of gas.
- (3) The Gas Regulator must, when approving the maximum prices in accordance with section 21(1)(p) of the Act-
- (a) be objective i.e. based on a systematic methodology applicable on a consistent and comparable basis;
 - (b) be fair;
 - (c) be non-discriminatory;
 - (d) be transparent;
 - (e) be predictable; and
 - (f) include efficiency incentives.
- (4) Maximum prices referred to in subregulation (3) must enable the licensee to -
- (a) recover all efficient and prudently incurred investment and operational costs; and
 - (b) make a profit commensurate with its risk.
- (5) The Gas Regulator must approve maximum prices for gas for each distribution area or group of distribution areas as indicated in Annexure A for the following classes of customers:
- (a) Residential; and
 - (b) commercial and industrial.
- (6) When gas is sold, the accompanying sales invoice must itemise the constituent elements of the total price reflected on the invoice, including at least the cost of gas, any transport tariffs and any other charges.
- (7) Licensees must provide the Gas Regulator with sufficient information as required by the Gas Regulator for it to determine maximum prices.
- (8) Licensees may be required to file contracts signed with customers with the Gas Regulator.

- (9) The Gas Regulator may not make public the contents of contracts referred to in subregulation (8) if such information is protected in terms of the Promotion of Access to Information Act.
- (10) The Gas Regulator must, as far as possible, promote fair pricing through price transparency rather than direct intervention in order to enable consumers to make informed market decisions.
- (11) In order to promote price transparency and the prevention of discrimination-
- (a) trading licensees must provide the Gas Regulator within three months of the end of each calendar year, the annual volume and average price for that year for each of its customers consuming less than 10 million gigaJoules per annum;
 - (b) the Gas Regulator must publish aggregated results for categories of customers defined in subregulation (5) on a provincial basis;
 - (c) the Gas Regulator may not release information pertaining to individual customers if such information is protected in terms of the Promotion of Access to Information Act; and
 - (d) there must be at least three customers in a given category for a price to be published.
- (12) The invoices issued by licensees to customers and consumers must indicate-
- (a) the acquisition or production cost of the gas; and
 - (b) details of all tariff charges applied, including metering and other charges.
- (13) When the ownership of gas changes, the price of gas in the new owner's hands refers to the price of gas from the seller plus any tariffs charged by that seller.

Information regarding historically disadvantaged South Africans

5. (1) Information regarding historically disadvantaged South Africans provided by a licensee must include-

- (a) the number of shareholders from historically disadvantaged background and their respective shareholding in the licensee;
- (b) the number and positions of historically disadvantaged South Africans who are members of the Board of Directors of the licensee;
- (c) the number of historically disadvantaged South Africans who hold senior management positions in the licensee;
- (d) the quantity and percentage of subcontracted work to companies with more than 50% ownership by historically disadvantaged South Africans;
- (e) proof of compliance with the Employment Equity Act, 1998 (Act No. 55 of 1998); and
- (f) plans for and actions taken to develop historical disadvantaged South Africans in the gas sector through training, procurement and enterprise development.

(2) The Gas Regulator must utilise the information acquired in terms of subregulation (1) in such a manner so as to facilitate the addressing of historical inequalities and to broaden the country's economic base and accelerate growth, job creation and poverty alleviation.

(3) The information acquired may be used to create a scoring schedule mechanism to promote historically disadvantaged South Africans.

(4) The scoring mechanism contemplated in subregulation (3) must include-

- (a) the core activities of the piped gas industry;
- (b) historically disadvantaged South Africans such as shareholders, directors, management and subcontractors;
- (c) target indicators;
- (d) weighting factors;
- (e) achievements; and
- (f) bonus provision for exceeding targets.

Third party access to transmission pipelines

6. (1) Third party access to transmission lines that are not specifically provided for in the agreement are governed by this regulation.

(2) The allocation mechanism to be used in order to ensure third party access to uncommitted capacity in transmission pipelines must comply with the following principles:

- (a) Use-it-or-lose-it taking into account diurnal and seasonal load profiles;
- (b) non-discrimination;
- (c) defined time periods; and
- (d) technical feasibility.

(3) Where two or more applications for access to uncommitted capacity of transmission pipelines are received by the transmission pipeline licensee on the same date, priority must be allocated according to the most attractive application to the transmission pipeline licensee, taking into account such identifiable elements such as the proposed volumes, revenue generated and length of contract.

(4) The Gas Regulator may upon receipt of a complaint, from a third party regarding a refusal for third party access to a transmission line, determine uncommitted capacity in the transmission pipeline and determine an allocation mechanism that is consistent with subregulation (2).

(5) A transmission licensee must not discriminate between customers or classes of customers, particularly with regard to the granting of more favourable conditions to its related undertakings than to other customers or classes of customers.

(6) A transmission licensee may not discriminate in respect of-

- (a) the manner, content and timing of the provision of any information that pertains to third party access to customers or prospective customers;
- (b) the manner and timing of processing of applications and granting of capacity;
- (c) the terms and conditions of any grant of capacity and any other service to be provided to any customer or prospective customer;

- (d) tariff methods and prices, including but not limited to the offering and granting of any discount and the imposing of any surcharge;
- (e) nominations and balancing of gas entering and exiting the system; and
- (f) scheduling of maintenance activities.

(7) A transmission licensee interconnected to other systems must provide sufficient information to any other transmission licensee, storage licensee, distribution licensee or reticulator to ensure that the transport of gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.

(8) All parties in third party access negotiations and transactions must avoid any abuse of a dominant position and negotiations for access to the system must be in good faith.

(9) A transmission licensee must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business and may not provide commercially sensitive information to a related undertaking.

(10) The Gas Regulator may, at the request of one or more parties negotiate for third party access to gas transmission pipelines and after consultation with the parties concerned, fix a term within which the negotiations must be completed.

(11) A transmission licensee must lodge with the Gas Regulator its guidelines for the use of the transmission system within the first year following implementation of these regulations.

(12) The information contained in the guidelines referred to in subregulation (11) must be publicly available and be sufficient to enable potential customers to understand the procedure for obtaining access to a transmission pipeline, as well as to enter and conclude negotiations with the transmission licensee.

(13) The guidelines contemplated in subregulation (11) must include-

- (a) a detailed description of the gas transmission system indicating all inlet and outlet points;
- (b) all ownership boundaries;

- (c) method by which the tariffs are calculated;
 - (d) method by which a customer may request a tariff;
 - (e) contractual terms and conditions regarding use and payment;
 - (f) technical requirements for access to the network; and
 - (g) the process to request access.
- (14) The Gas Regulator must, when determining the uncommitted capacity for transmission pipelines, consider the following elements:
- (a) contractual commitments of the transmission licensee;
 - (b) variations in pipeline capacity from one segment to another;
 - (c) potential to increase pipeline capacity by additional compression, linepacking, backhauling, parallel lines, peak storage facilities;
 - (d) temperature and pressure differences;
 - (e) load profile and swing requirements;
 - (f) gas specifications; and
 - (g) whether or not capacity allocations are being used to limit access to the transmission facilities.

Third party access to storage facilities

7. (1) The allocation mechanism to ensure third party access to uncommitted capacity in storage facilities must comply with the following principles:

- (a) Use-it-or-lose-it taking into account diurnal and seasonal load profiles;
- (b) non-discrimination;
- (c) defined time periods; and
- (d) technical feasibility.

(2) Where two or more applications for mandatory third party access are received by a storage licensee on the same date, the storage licensee must select the most attractive application, taking into account objective elements such as the proposed volumes, revenue generated and length of contract.

- (3) The Gas Regulator may upon receipt of a complaint, from a third party regarding a refusal for third party access to a storage facility, determine uncommitted capacity in the transmission pipeline and determine an allocation mechanism that is consistent with subregulation (1).
- (4) A storage facility licensee interconnected to other systems must provide sufficient information to any other transmission licensee, storage licensee, distribution licensee or reticulator to ensure that the storage of gas may take place in a manner compatible with the secure and efficient operation of the interconnected system.
- (5) A storage facility licensee must preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business and may not provide commercially sensitive information to a related undertaking.
- (6) A storage facility licensee may not discriminate between customers or classes of customers, particularly with regard to the granting of more favourable conditions to its related undertakings than to other customers or classes of customers.
- (7) A storage facility licensee may not discriminate in respect of -
- (a) the manner, content and timing of the provision of any information to customers or prospective customers as required by the Act;
 - (b) the manner and timing of processing of applications and granting of capacity;
 - (c) the terms and conditions of any grant of capacity and any other service to be provided to any customer or prospective customer;
 - (d) tariff methods and prices, including but not limited to the offering and granting of any discount and the imposing of any surcharge;
 - (e) nominations and balancing of gas entering and exiting the storage facility; and
 - (f) scheduling of maintenance activities.
- (8) All parties in third party access negotiations and transactions must avoid any abuse of a dominant position and negotiations for access to the system must be in good faith.

- (9) The Gas Regulator may, at the request of one or more parties to negotiations for third party access to storage facilities and after consultation with the parties concerned, fix a term within which the negotiations must be completed.
- (10) A storage facility licensee must lodge with the Gas Regulator its guidelines for the use of the system within the first year following implementation of these regulations.
- (11) The information contained in the guidelines referred to in subregulation (10) must be publicly available and must be sufficient to enable potential customers to understand the procedure for obtaining access and to enter and conclude negotiations.
- (12) The guidelines contemplated in subregulation (10) must include -
- (a) a detailed description of the gas storage system indicating all inlet points and outlet points.
 - (b) method by which the tariffs are calculated;
 - (c) method by which a customer may request a tariff;
 - (d) contractual terms and conditions regarding use and payment;
 - (e) technical requirements for access to the storage facility and network; and
 - (f) the process to request access.
- (13) The Energy Regulator must, when determining the uncommitted capacity for storage facilities, consider the following elements:
- (a) Contractual commitments;
 - (b) type of storage facility;
 - (c) cushion gas requirements;
 - (d) load profile and swing requirements;
 - (e) particular range of specifications of gas; and
 - (f) whether or not capacity allocations are not being used to limit access to the storage facilities.
- (14) Storage owned and operated by a reticulator solely for reticulation purposes is exempted from these mandatory third party access regulations.

(15) Storage that forms part of the process of and is within the premises of a liquefaction or regasification plant is exempted from these mandatory third party access regulations.

Review of license conditions

8. (1) Any person aggrieved by a condition imposed by the Gas Regulator in terms of section 21(1) of the Act may apply to the Gas Regulator in writing to have the condition reviewed.

(2) The application referred to in subregulation (1) must contain the following information:

- (a) The name of the licensee to which this objection is applicable;
- (b) the licence number to which objection is being made;
- (c) the name and surname of the person, company or organisation that is objecting to the licence condition;
- (d) the name and surname of the objector or the objector's contact person
- (e) the telephone and fax numbers of the objector or the objector's contact person;
- (f) the postal address of the objector or the objector's contact person;
- (g) the licence condition to which objection is being made;
- (h) the details of the objection;
- (i) the reasons for the objection and provide the necessary supporting documentation; and
- (j) an indication of whether or not the objector requests an opportunity to orally present the objection to the Gas Regulator.

Registration information

9. (1) A person contemplated in section 28 (1) of the Act must provide the following information to the Gas Regulator:

- (a) The actual and planned production quantities and specification details of gas including gas intended for own use;
 - (b) the sources, specifications and quantity of imported gas; and
 - (c) the gas reserves data measured in trillions of cubic feet.
- (2) The information referred to in subregulation (1) must be supplied within three months of the end of each calendar year.
- (3) Notwithstanding subsection (2), if during a calendar year there is any substantial change to the information provided under subregulation (1), the person concerned must notify the Gas Regulator in writing thereof.

Expropriation procedures

10. (1) A licensee contemplated in section 32 (1) of the Act may request the Gas Regulator, in writing, to expropriate land, or any right in, over or in respect of land on his or her behalf.
- (2) A request contemplated in subregulation (1) must contain the following information:
- (a) The nature of the request;
 - (b) the reason for the request;
 - (c) evidence of attempts to acquire the land or right in, over or in respect of such land by agreement with the owner;
 - (d) reasons why those attempts to reach agreement with the owner did not succeed;
 - (e) reasons why such land is reasonably required by the licensee;
 - (f) reasons why the acquisition of the land is in the public interest and will enhance the Republic's gas infrastructure;
 - (g) a plan of the project contemplated; and
 - (h) specification of the proposed land required.

- (3) The Gas Regulator must, before considering an expropriation, satisfy itself that a voluntary agreement cannot be reached between the applicant and the owner of the land or right in question.
- (4) The Gas Regulator must, in the absence of a voluntary agreement-
- (a) hold a hearing to which are invited:
 - (i) the applicant;
 - (ii) the owner and, if the land is leased, the leasee of the land; and
 - (iii) other affected persons whom must be invited by means of a notice contemplated in paragraph (b);
 - (b) publish a notice setting out the date, time and venue of the hearing at least two weeks in advance in a newspaper circulated in the area in which the expropriation is sought inviting affected persons; and
 - (c) be satisfied that the land or right is reasonably required by the licensee.
- (5) The Gas Regulator must, in making a determination for the purpose of subregulation (4)(c), consider-
- (a) whether the planned facilities will enhance the Republic's gas infrastructure;
 - (b) the nature of the proposed servitude or amendment to a servitude, including the nature and function of the gas infrastructure relating to the proposed servitude or amendment to a servitude;
 - (c) whether or not any existing gas infrastructure can be used to give effect to the proposed servitude;
 - (d) the probable duration of the proposed servitude;
 - (e) the extent of the deprivation of use of the land likely to be suffered as a result of the proposed servitude or amendment to a servitude;
 - (f) the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the proposed servitude or amendment to a servitude;
 - (g) the extent to which the land can reasonably be rehabilitated on termination of the proposed servitude;
 - (h) any advantage that the landowner or other person with a compensational interest in the land subject to the servitude is likely to derive as a result of the proposed servitude or amendment to a servitude; and

- (i) the public interest served by the gas infrastructure relating to the proposed servitude or amendment to a servitude.
- (6) An expropriation award made by the Gas Regulator must be accompanied by a recommendation as to compensation.
- (7) The Gas Regulator must, in making a recommendation on compensation, consider-
- (a) the nature of the proposed servitude or amendment, including the nature and function of the gas infrastructure relating to the proposed servitude or amendment;
 - (b) whether any existing gas infrastructure will be used to give effect to the proposed servitude;
 - (c) the probable duration of the proposed servitude;
 - (d) the extent of the deprivation of use of the land likely to be suffered as a result of the proposed servitude or amendment;
 - (e) the rental value of the land affected by the proposed servitude or amendment;
 - (f) the nature and extent of the actual inconvenience or loss likely to be suffered as a result of the exercise of the rights under the proposed servitude or amendment;
 - (g) the extent to which the land can reasonably be rehabilitated on termination of the proposed servitude;
 - (h) any advantage that the landowner or other person with a compensational interest in the land subject to the servitude is likely to derive as a result of the proposed servitude or amendment; and
 - (i) the public interest served by the gas infrastructure relating to the proposed servitude or amendment.
- (8) The Gas Regulator must make a decision on an expropriation application and the conditions thereof within 30 days of the completion of the hearing contemplated in subregulation 4(a).
- (9) If a party concerned does not accept the Gas Regulator's recommendation regarding compensation, that party may approach a court to determine the amount and the time and manner of payment of compensation.

- (10) The acquisition, amendment or cancellation of a servitude by virtue of an order of the Gas Regulator takes effect when the order is noted in terms of the legislation applicable to the registration of title deeds.
- (11) An owner of land or any right in, over or in respect of land subject to a servitude granted by the Gas Regulator may apply to the Gas Regulator for the cancellation of that servitude-
- (a) if the relevant licence associated with the servitude is terminated;
 - (b) if the rights and obligations in respect of the servitude have not been exercised on the land subject to the servitude for a continuous period of three years; or
 - (c) for any other lawful reason.
- (12) The Gas Regulator may recover all or part of the costs that it incurs in holding a hearing contemplated in subregulation 4(a) from the applicant.

Rehabilitation of land

- 11.(1) A licensee must, not later than six months prior to termination, relinquishment or abandonment of licensed activity, submit to the Gas Regulator a plan for approval for the closure, removal and disposal, as the case may be, of all installations relating to the licensed activity.
- (2) The plan contemplated in subregulation (1) must include information regarding-
- (a) alternatives investigated for further use and alternative disposal of the installations;
 - (b) decommissioning activities;
 - (c) site clean up, removal and disposal of dangerous material and chemicals; and
 - (d) an environmental impact assessment of the termination and abandonment of the activity concerned.

(3) The Gas Regulator may approve the plan contemplated in subregulation (1) subject to any condition or amendment determined by the Gas Regulator.

(4) From time to time, licence conditions may incorporate, by referral any current legislation on the rehabilitation of land used in connection with the transmission, storage, distribution, liquefaction or re-gasification of gas or the trading therein, and may include the provision of environmental performance bonds for rehabilitation purposes and the composition and amount of such guarantees.

(5) The financial provision contemplated in subregulation (4) may include-

- (a) an insurance policy;
- (b) a bank guarantee;
- (c) a trust fund; or
- (d) other financial arrangement acceptable to the Gas Regulator.

(6) The Gas Regulator may require confirmation in writing from a licensee that it is in compliance with the requirements of the National Environmental Management Act, 1998 (Act No 107 of 1998).

(7) The Gas Regulator may not consent to the termination of the financial security arrangement contemplated in subregulations (4) and (5) before it is in receipt of a certificate from an independent consultant competent to conduct environmental impact assessments in accordance with the provisions of the National Environmental Management Act, 1998 (Act No. 107 of 1998), stating that the site has been rehabilitated.

Fair administrative action

12.(1) The Gas Regulator must, in the case where its administrative action may materially and adversely affect the rights or legitimate expectations of any person, call for written representations to adduce the relevant facts.

(2) The Gas Regulator must, for purpose of subregulation (1), give-

- (a) at least two week's notice of the deadline for written representations;
 - (b) a clear statement of the intended administrative action; and
 - (c) a reasonable opportunity for persons who may be affected by the proposed administrative action to make representations.
- (3) The call for written representations must be given on the Gas Regulator's web site and on a public notice board at the Gas Regulator's offices.
- (4) When considered appropriate by the Gas Regulator, notices of the call for written representations may be communicated by the Gas Regulator directly to the persons concerned.
- (5) Licencees must provide the Gas Regulator with a list of all their potential customers or customers and persons likely to be materially and adversely affected together with their addresses and contact details within a time specified by the Gas Regulator if directed to do so in writing by the Gas Regulator.
- (6) The Promotion of Administrative Justice Act shall be applicable to all administration action undertaken by the Gas Regulator.

Determination of gas specifications

13.(1) The Gas Regulator may set a range of gas specifications, including maximum concentrations of gases that may be harmful, for each licensed activity where gas is comingled or is planned to be comingled from two or more separately owned sources.

- (2) The determination of gas specifications must be governed by-
- (a) the chemical composition of the gas involved;
 - (b) the calorific values;
 - (c) the combustion properties including the wobbe index;
 - (d) the pressure and temperature of the gas at point of entry to shared systems; and
 - (e) the relevant additional components that may be determined by the Gas Regulator.

(3) The Gas Regulator may determine the technical and commercial feasibility of the miscibility of gases and the maximum quantities from individual sources to promote the interconnection and interoperability of systems.

(4) Where it is not technically feasible or economically viable to make gases from different systems compatible, those gases must be conveyed in separate pipeline systems and stored in separate storage facilities.

Mediation

14.(1) A request to the Gas Regulator to act as mediator must be made in writing and must set out the nature of the dispute between the parties.

(2) A person appointed in terms of section 30(2)(a) of the Act must-

- (a) be a person suitable person with no conflict of interest in the matter; and
- (b) be so appointed within ten working days of receipt of the application for mediation.

(3) At the commencement of mediation, the appointed mediator must -

- (a) inform the parties that he or she does not have any conflict of interest;
- (b) inform the parties about the procedure and manner in which the mediation will be conducted;
- (c) inform the parties how the fees contemplated in regulation 16 must be paid and to whom payments should be made; and
- (d) secure agreement from the parties to the dispute with regard to paragraphs (a) to (c) before proceeding with the mediation.

Arbitration

- 15.(1) A request to the Gas Regulator to act as arbitrator must be made in writing and must set out the nature of the dispute between the parties.
- (2) A person appointed in terms of section 30(2)(a) of the Act must-
- (a) be a suitable person with no conflict of interest in the matter; and
 - (b) be so appointed within ten working days of receipt of the application for arbitration.
- (3) At the commencement of arbitration, the appointed arbitrator must-
- (a) inform the parties that he or she does not have any conflict of interest;
 - (b) inform the parties about the procedure and manner in which the arbitration will be conducted;
 - (c) inform the parties how the fees contemplated in regulation 16 must be paid and to whom payments should be made;
 - (d) inform the parties that any award made will be final and binding; and
 - (e) secure agreement from the parties to the dispute with regard to paragraphs (a) to (d) before proceeding with the arbitration.
- (4) The claimant party initiating a dispute must submit to the arbitrator and to the respondent party against whom the claim is being made a written statement containing the following information:
- (a) the name and address of the person who will represent the claimant at the proceedings;
 - (b) a detailed description of the dispute; and
 - (c) the relief or remedy sought and the amount claimed, if applicable.
- (5) The respondent shall, after receipt of the statement referred to in subregulation (4), submit a written statement of defence to the arbitrator and the claimant by a date determined by the arbitrator.
- (6) During arbitration proceedings, any party may amend or supplement its claim, counterclaim or defence, unless the arbitrator considers it inappropriate to allow such

amendment or supplement, because of the party's delay in making it, if it would be prejudicial to the other parties, or because of any other circumstances.

(7) A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate.

(8) Any party to an arbitration may be represented in an arbitration.

(9) The names, addresses and telephone numbers of representatives shall be communicated in writing to the other parties and to the arbitrator.

(10) The parties or their representatives may communicate in writing directly with the arbitrator: Provided that copies of such documents are provided to all the other parties to the dispute.

(11) The arbitrator must conduct the arbitration in a manner ensuring that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(12) Documents or information supplied to the arbitrator by one party shall at the same time be supplied by that party to the other party or parties.

(13) Each party shall have the burden of proving the facts relied on to support its claim or defence.

(14) At any time during the proceedings, the arbitrator may order parties to produce documents, exhibits or other evidence that it deems necessary or appropriate.

(15) The arbitrator may appoint one or more independent experts to report to it, in writing, on specific issues designated by the arbitrator and communicated to the parties.

(16) The parties shall provide an expert with any relevant information or produce for inspection any relevant documents or goods that such expert may require.

- (17) Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the arbitrator for decision.
- (18) Upon receipt of an expert's report, the arbitrator shall send a copy of the report to all parties to the dispute and shall give the parties to the dispute an opportunity to express, in writing, their opinion on the report.
- (19) A party may examine any document on which the expert has relied in such a report.
- (20) At the request of a party, the arbitrator shall give the parties an opportunity to question the expert at a hearing and to present expert witnesses to testify on the points at issue during arbitration proceedings.
- (21) Awards by an arbitrator shall be made in writing and shall be final and binding on the parties and the parties must carry out any such award without delay.
- (22) The arbitrator must state the reasons for the award.
- (23) An award may be made public only with the consent of the parties to the dispute or as required by law.
- (24) In addition to making a final award, the arbitrator may make interim, interlocutory, or partial orders and awards.
- (25) The arbitrator must, upon request of the parties, terminate the arbitration if the parties settle the dispute before an award is made.
- (26) If in the opinion of the arbitrator, the continuation of the proceedings becomes unnecessary or impossible for any reason, the arbitrator must inform the parties of its intention to terminate the proceedings and must thereafter issue an order terminating the arbitration.
- (27) Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrator.

(28) The arbitrator shall keep confidential all matters relating to the arbitration or the award, unless otherwise agreed by the parties or required by applicable law.

(29) The arbitrator shall not be liable for any act or omission in connection with any arbitration conducted under these regulations, except for the consequences of conscious and deliberate wrongdoing.

Costs of mediation and arbitration

16.(1) The Gas Regulator may charge fees for mediation and arbitration services.

- (2) The fees referred to in subregulation (1) must be-
- (a) sufficient to recover all or part of the costs incurred by the Gas Regulator including, if applicable, the costs of a person referred to in section 30(2)(a) of the Act; and
 - (b) paid by one or more of the parties to the dispute as is determined by the mediator or arbitrator concerned taking into account the circumstances of the dispute.
- (3) The fees contemplated in this regulation must be paid within thirty calendar days of receipt of an invoice unless the Gas Regulator determines otherwise.

Rendering of information

17. (1) A licensee must submit to the Gas Regulator the following information, in addition to any other information required:

- (a) Detailed audited annual accounts consisting of a balance sheet, income statement and cash flow statement for each licensed gas facility and activity;

- (b) an updated plan of the distribution network and details of availability for public inspection; and
 - (c) the annual volume, average charges and name and address for each of its customers consuming less than 10 million gigaJoules per annum for the applicable financial year of the licensee.
- (2) The charge data supplied by a trading licensee must-
- (a) be limited to piped gas;
 - (b) reflect actual prices and tariffs and any other charges paid by the end-consumer excluding taxes;
 - (c) include meter rental, standing charge and the initial installation charge to the customer, where applicable;
 - (d) be on a calendar monthly basis; and
 - (e) be reported in Rands per gigaJoule.
- (3) Information provided in terms of this regulation must be submitted annually to the Gas Regulator within three months of the licensee's financial year end, except in the case of information provided in terms of subregulation (1)(a) that must be submitted annually within six months of the licensee's financial year end.

ANNEXURE A

Definition of the classes of customers as classified by their annual gas consumption in GigaJoules.

CLASS	ANNUAL GAS CONSUMPTION		
Class 1	Less than 400 GJ pa		
Class 2	401 GJ pa	to	4000 GJ pa
Class 3	4001 GJ pa	to	40 000 GJ pa
Class 4	40 001 GJ pa	to	400 000 GJ pa
Class 5	400 001 GJ pa	to	4 000 000 GJ pa
Class 6	> 4 000 000 GJ pa		