

FREQUENTLY ASKED QUESTIONS (FAQ) ON HOW TO COMPLY WITH THE PETROLEUM PIPELINES ACT (ACT NO. 60 OF 2003)

This document is intended to assist stakeholders in complying with the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) ([‘the Act’](#)). It also serves as a quick guide to relevant documents on NERSA’s website. By clicking on the links (**highlighted areas**) you will be taken to the relevant documents / parts of a document. Click the section on which you require information.

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SECTION 1

What are NERSA's roles and responsibilities?

Question 1

What are NERSA's roles and responsibilities?

Answer

NERSA was established in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004) to regulate the petroleum pipelines industry¹.

The powers and duties of NERSA are listed in [section 4](#) of the Act and include:

- i. issuing licences for the construction, operation and conversion of petroleum pipelines, petroleum storage facilities and petroleum loading facilities;
- ii. setting tariffs for petroleum pipelines and approving tariffs for petroleum storage facilities and petroleum loading facilities;
- iii. ensuring that access to petroleum pipelines, loading facilities and storage facilities is provided in a non-discriminatory, fair and transparent manner;
- iv. gathering and storing information relating to the construction, conversion and operation of petroleum pipelines, loading facilities and storage facilities;
- v. acting as mediator or arbitrator when requested by all parties to a dispute that falls within the ambit of the Act; and
- vi. investigating complaints into matters such as discrimination regarding tariffs and conditions of access, failure to obtain access to petroleum pipelines, loading facilities or storage facilities and failure by licensees to abide by tariffs set or approved by NERSA.

Question 2

What is the responsibility of owners of petroleum pipelines, petroleum storage facilities and petroleum loading facilities?

Answer

Owners of petroleum pipelines, petroleum storage facilities and petroleum loading facilities must:

- i. comply with the Act by first applying for licences to construct, operate or convert petroleum pipelines, storage facilities and loading facilities; and
- ii. thereafter, comply with the Act, Petroleum Pipelines Regulations and conditions of licence issued to them by NERSA.

¹ As well as the Electricity and Piped-Gas industries.

Question 3

What does NERSA not regulate?

Answer

NERSA is only responsible for the regulation of petroleum pipelines, petroleum storage facilities and petroleum loading facilities and does not regulate the manufacturing, wholesaling and retailing of petroleum products. This is the responsibility of the Department of Energy (DoE). Please visit the DoE website www.energy.gov.za for more information

Question 4

What is the [penalty for non-compliance](#)?

Answer

NERSA is permitted by the Act to impose fines of up to R2,000,000 per day for each day on which non-compliance continues.

Question 5

What do I do if I am not happy with the conditions of a licence issued by NERSA?

Answer

The Act allows NERSA to [amend](#) licence conditions on application.

A person who is not happy with a decision of NERSA can also take it on [review](#) to the High Court.

Question 6

What do I do if I no longer require a licence issued by NERSA?

Answer

The Act allows NERSA to [revoke](#) a licence on application by a licensee.

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SECTION 2

How do I apply for a construction licence?

Question 1

How do I apply for a construction licence?

Answer

You must submit a completed [licence application](#) to NERSA.

Tip:

Consult the following:

- i. The Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) ('the Act').
You are specifically referred to [Section 15 and 16](#) of the Act which covers pipelines, storage and loading facilities.
- ii. The Rules made in terms of section 33(3) of the Act ('the Rules')
You are specifically referred to [Chapter 1 and chapter 2](#) of the Rules which covers pipelines, storage and loading facilities.

Question 2

How [long](#) does it take for NERSA to decide on a licence application?

Answer

About 90 to 120 days from the date of notice to the applicant that the application meets the minimum requirements.

However, it will also depend on the quality, sufficiency and adequacy of the information provided in the application documents and the nature of the request for confidentiality.

Question 3

Can I apply for both a construction licence and an operation licence for a new facility in one application?

Answer

No. It is two separate applications. However, you may submit both of these applications at the same time.

Question 4

Is there any licence application fee payable?

Answer

No licence application fee is payable. However, the applicant must carry the cost of advertising the application in newspapers.

Question 5

Can I apply for a tariff prior to, or at the time of being granted a construction licence?

Answer

Yes, it is advisable for construction licences that a tariff application accompanies the licence application to enable the Energy Regulator to assess the feasibility of the project as part of the decision-making process.

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SECTION 3

How do I apply for an operation licence?

Question 1

How do I apply for an operation licence?

Answer

You must submit a completed [licence application](#) to NERSA.

Tip

Consult the following:

- i. The Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) ('the Act')
You are specifically referred to [Section 15 and Section 16](#) of the Act which *covers pipelines, storage and loading facilities*.

- ii. The Rules made in terms of section 33(3) of the Act ('the Rules')
You are specifically referred to [Chapter 1 and Chapter 2](#) of the Rules which *covers pipelines, storage and loading facilities*.

Question 2

Can I apply for different types of facilities (e.g. loading and storage facilities) in one licence application?

Answer

Yes. See [Section 19\(3\)](#) of the Act.

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SECTION 4

What information is required after a licence has been granted?

Question 1

Do licensees have to provide the Energy Regulator with any information after a licence has been granted?

Answer

Licensees have to comply with the requirements of the Petroleum Pipelines Act, 2003, the regulations passed under it and the conditions of their licences. In terms of the requirements, licensee must provide:

Once off:

- For storage facilities, the mechanisms used to allocate storage capacity at their licensed facilities.

Annually on the anniversary of their licence

- For all licensees, the mechanisms to promote Historically Disadvantaged South Africans (HDSA).

Monthly

- For storage facilities, the actual utilisation of the storage facility.
- The average monthly volumes stored for the licensee and for any other party.

The conditions of each licence may vary, and require different licensees to provide specific information. The Energy Regulator may also request a licensee to provide it with any information required.

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SECTION 5

When and how do I convert a licence?

Question 1

When is a conversion of a licence required?

Answer

When changes are made to an existing pipeline, storage facility or loading facility that would change its functional specification and/or operations. For example, if an existing crude oil pipeline is converted to transport petroleum products.

Question 2

How do I convert a licence?

Answer

You must submit a completed [licence application](#) to NERSA.

Tip

Consult the following:

- i. The Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) ('the Act').
You are specifically referred to [Section 15 and Section 16](#) of the Act which covers pipelines, storage and loading facilities.

- ii. The Rules made in terms of section 33(3) of the Act ('the Rules').
You are specifically referred to [Chapter 1, Chapter 2 and Chapter 3](#) of the Rules which covers pipelines, storage and loading facilities.

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SECTION 6

When and how do I amend a licence?

Question 1

When can a licence be amended?

Answer

If anyone is unhappy with the conditions of the licence imposed by NERSA, that person may request NERSA to amend such conditions.

Question 2

How do I apply to amend a licence?

Answer

You must submit a completed [amendment application](#).

Tip

Consult the following:

- i. The Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) ('the Act').
You are referred to [Section 23](#) of the Act.
- ii. The Rules made in terms of section 33(3) of the Act ('the Rules')
You are referred to [Chapter 1, Chapter 2 and Chapter 3](#) of the Rules.

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SECTION 7

When and how do I revoke a licence?

Question 1

How do I apply to revoke a licence issued previously?

Answer

You must submit a completed licence [revocation application](#).

Licensees must give the Energy Regulator notice in writing, at least 12 months or such shorter period as the Energy Regulator may approve in advance of their intention to cease their activities. See [Section 24](#) of the Act.

Tip

Consult the following:

- i. The Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) (' the Act').
You are referred to [Section 24](#) of the Act.
- ii. The Rules made in terms of section 33(3) of the Act ('the Rules')
You are referred to [Chapter 1, Chapter 2 and Chapter 3](#) of the Rules.

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SECTION 8

How do I apply for a tariff?

Question 1

How do I apply for a tariff?

Answer

You must submit a tariff application. Some of the following documents are required reading, depending upon whether it is for (a) a pipeline, (b) a storage or (c) a loading facility. You will need to select from the following list of documents on NERSA's website:

- i. Regulations in terms of the Petroleum Pipelines Act, 2003 (Act No. 60 of 2003) ('the Act'). You are specifically referred to [Section 4](#), [Section 5](#) and [Section 9](#) of the Regulations which covers both pipelines and storage and loading facilities.
- ii. [Tariff methodology](#) for the setting of Petroleum Pipeline Tariffs - 5th Edition.
- iii. [Tariff Methodology for Petroleum loading facilities and Petroleum storage facilities](#) – Version 2. 31 March 2011.
- iv. Frequently asked questions ([FAQ](#)) pertaining to tariffs in the petroleum pipelines industry.
- v. [Interest Cover Ratio Range](#) for the Petroleum Pipelines Industry.
- vi. Guidelines for [Annual Assessment](#) of Storage and Loading facilities Tariff Applications.
- vii. Various documents pertaining to the minimum information requirements for tariff applications ([MIRTA](#) documents) (guidelines, checklists and templates which covers pipelines and storage and loading facilities).
- viii. Tariff model for the setting and approval of tariffs in the petroleum pipelines industry.
- ix. Economic data on the market risk premium ([MRP](#)).
- x. [Beta value](#) for tariffs in the petroleum pipelines industry.
- xi. CPI forecast ([CPI_f](#)) and prime interest rate.

Question 2

Will NERSA assist me to prepare a tariff application?

Answer

Yes. Make an appointment with the Head of the Department: Petroleum Pipelines Tariffs before you submit the tariff application.

Question 3

How long does NERSA take to decide on a tariff application?

Answer

It depends on the adequacy of information submitted and how complex the application is. A complex tariff application can take about six months.

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SECTION 9

Will information submitted to NERSA be treated with confidentiality?

Question 1

Will information submitted to NERSA as part of a tariff application be treated as confidential?

Answer

Yes, but only if you ask for it and NERSA approves. A request for confidentiality should be submitted in the prescribed format. This format is as per [Rule 4](#) of the following document which is published on NERSA's website:

- i. Rules in terms of the Petroleum Pipelines Act, 2003 ([Act No. 60](#) of 2003).
- ii. The Energy Regulator applies the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ([PAIA](#)), and [the National Key Points Act](#), (Act 102 of 1980).

Question 2

What information does NERSA regard as confidential in terms of tariff applications?

Answer

- i. Personal information (e.g. Identification Documents).
- ii. Security sensitive information (e.g. Security arrangements at National Key Points).
- iii. Commercially sensitive information

The table on the next page provides an overview of what information is usually treated as confidential by NERSA when tariff applications are published for consultation purposes.

Components as per the Tariff Methodology Allowable Revenue = (RAB X WACC)+D+E+F +C+T	NERSA treatment of confidential information.			
	Legend c = confidential c(r) = confidential with a range		nc = not confidential NA = not applicable	
	State owned: pipelines	Privately owned pipelines	State owned: storage facilities	Privately owned storage facilities
Weighted average Cost of Capital (WACC)				
- Inflation (i)	nc	nc	nc	nc
- Risk Free rate (Rf)	nc	nc	nc	nc
- Market Return (MR)	nc	nc	nc	nc
- Market risk premium (MRP)	nc	nc	nc	nc
- Industry Beta based on proxy companies	nc	nc	nc	nc
- Names of companies used for Beta value	nc	nc	nc	nc
- Beta adjustment	c	c	c	c
- Total Beta (final Beta as applied for)	nc	c(r)	nc	c(r)
- Cost of Debt (Kd)	nc	c	nc	c
- Cost of Equity (Ke)	nc	c	nc	c
- Weighted average cost of capital (WACC)	nc	c	nc	c
- Forecasted capital structure	c	c	c	c
Regulatory Asset Base (RAB)				
- Starting regulatory asset base (SRAB)	nc	c(r)	nc	c(r)
- Accumulated depreciation on RAB	c(r)	c(r)	c(r)	c(r)
- Borrowing costs (AFUDC) capitalised	nc	c	nc	c(r)
- Grant funding	nc	NA	NA	NA
- Annual deferred tax	nc	c(r)	nc	c(r)
- Accumulated deferred tax	nc	c(r)	nc	c(r)
- Net working capital (w)	nc	c(r)	nc	c(r)
- RAB per separate asset class	c	c	c	c
- Total value of RAB (V-d+w)	nc	c(r)	nc	c(r)
Depreciation (D)				
- Useful life of all asset classes	nc	c	nc	c
- Depreciation on individual asset classes	c	c	c	c
- Depreciation on total RAB	nc	c(r)	nc	c(r)
Expenses (E)				
- Annual decommissioning costs on individual assets / asset classes	c	c	c	c
- Annual decommissioning costs on total on RAB	nc	c(r)	nc	c(r)
- Accumulated decommissioning costs on individual assets /asset classes	c	c	c	c
- Accumulated decommissioning costs on total RAB	nc	c(r)	nc	c(r)
- Individual operational expense items	c	c	c	c
- Total operational expense items	c(r)	c(r)	c(r)	c(r)
F-Factor (F)				
- Value for the current year	nc	nc	NA	NA
- Value accumulated	nc	nc	NA	NA
Clawbacks (C)				
- Value for the current year	nc	nc	nc	nc
- Value accumulated	nc	nc	nc	nc
Tax (T)				
- Taxable income	nc	c	nc	c
- Tax amount	nc	c(r)	nc	c(r)
Allowable Revenue (AR)				
- Total allowable revenue	nc	c(r)	nc	c(r)
Throughput volumes				
- per pipeline / per storage facility	c	c	c	c
- total volumes / capacity (for purposes of tariffs)	nc	nc	nc	nc

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SECTION 10

Will there be public participation with regard to applications?

Question 1

Will the Energy Regulator allow interested/affected parties and the public to have input into the consideration of the licence application?

Answer

Yes. Interested/affected parties and the public can put their views to the Energy Regulator. Parties may submit written comments or objections to the Energy Regulator during the 30 days that the application is being advertised. They may also choose to make a presentation at the public hearing that the Energy Regulator may hold on the application. Parties may choose one or both of these participation options.

Parties are also welcome to attend as observers at any public hearing held.

Question 2

How does one then get to participate at the public hearings?

Answer

Anyone wishing to participate at the public hearing may contact the person reflected in the advertisement for the public hearing.

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SECTION 11

How do I obtain access to petroleum facilities

Question 1

How do I obtain access to a storage facility?

Answer

You need to send a request to the owner of the concerned storage facility, following the process for requesting access as outlined in the allocation mechanism published by the licensee.

Question 2

Where can I find a copy of the capacity allocation mechanism?

Answer

A copy of the allocation mechanism can be obtained from the licensee's website and at the petroleum storage facility concerned.

Question 3

What should a storage capacity allocation mechanism contain?

Answer

The information required is outlined in regulation 3(8) of the Petroleum Pipelines Regulations. For guidance in the compilation of your allocation mechanism, please refer to the following document on the NERSA website:

- i. Allocation Mechanism [Guidelines](#) for Third-Party Access to Petroleum Storage Facilities

Question 4

What do I do in the event that I cannot find the allocation mechanism from the licensee's website or at the petroleum storage facility?

Answer

Please lodge a complaint with the Energy Regulator either:

- i. by fax at +2712 401 4700;
- ii. in writing, by emailing petroleumcompliance@nersa.org.za; or
- iii. by posting it to the Executive Manager: Petroleum Pipelines Regulation, PO Box 40343, Arcadia, 0007.

Question 5

What is an allocation mechanism for uncommitted capacity to petroleum storage facilities?

Answer

An allocation mechanism is the licensee's document that tells you how you may make use of that storage facility.

Question 6

What can I do if a licensee refuses to grant me access to its petroleum storage facility?

Answer

You can [lodge a complaint](#) with the Energy Regulator. Please lodge a complaint with the Energy Regulator either:

- i. by fax to +2712 401 4700;
- ii. in writing, by emailing petroleumcompliance@nersa.org.za; or
- iii. by posting it to the Executive Manager: Petroleum Pipelines Regulation, PO Box 40343, Arcadia, 0007.

Include evidence of the efforts you have made to resolve the situation before lodging the complaint. See [Rule 16](#) of the Rules made in terms of the Act.

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EXTRACTS FROM THE PETROLEUM PIPELINES ACT

4. Powers and duties of Authority.—

The Authority must, as appropriate, in accordance with this Act—

- (a) issue licences for—
 - (i) the construction and conversion of petroleum pipelines, loading facilities and storage facilities; and
 - (ii) the operation of petroleum pipelines, loading facilities and storage facilities;
- (b) gather and store information relating to the construction, conversion and operation of petroleum pipelines, loading facilities and storage facilities;
- (c) undertake investigations and enquiries into the activities of licensees;
- (d) act as mediator or arbitrator in accordance with the provisions of this Act;
- (e) consult, where necessary, with Government Departments and other bodies and institutions regarding any matter contemplated in this Act;
- (f) set or approve tariffs and charges in the manner prescribed by regulation;
- (g) monitor and take appropriate action, if necessary, to ensure that access to petroleum pipelines, loading facilities and storage facilities is provided in a non-discriminatory, fair and transparent manner;
- (h) expropriate land or any right in or any right in respect of land, necessary for the exercise of a licensee's rights;
- (i) promote competition in the petroleum pipeline industry;
- (j) take decisions that are not at variance with published Government policy;
- (k) perform any activity incidental to the performance of its duties;
- (l) make rules in accordance with section 33 (3); and
- (m) exercise any power or perform any duty conferred or imposed on it under any law. ([Click here to return.](#))

15. Activities requiring licence.—

- (1) A person may not, without a licence issued by the Authority—
 - (a) construct a petroleum pipeline, a loading facility or a storage facility; or
 - (b) operate a petroleum pipeline, a loading facility or a storage facility.
- (2) The Authority may—
 - (a) determine whether any person is engaged in any of the activities requiring a licence;
 - (b) direct any person engaged in any of the activities requiring a licence in terms of subsection (1) who is not in possession of the necessary licence to cease such activity.
- (3)
 - (a) Nothing in this Act precludes any potential licensee from discussing the contemplated construction or operation of petroleum pipelines, loading facilities or storage facilities with the Authority prior to filing a licence application.
 - (b) The Authority must furnish an applicant contemplated in paragraph (a) with all information that is necessary to facilitate the filing of an application in terms of this Act.
- (4) A request for further information, notification or discussions referred to in subsection (3) may not be construed as conferring any right or expectation upon an applicant.

16. Application for licence.—

- (1) Any person who has to apply for a licence in terms of section 15 must be the owner of the pipeline or facility in question and must do so in the form and in accordance with the procedure prescribed by rule, and an application must be accompanied by the application fee prescribed by rule.
- (2) Any application contemplated in subsection (1) must include—
 - (a) the name, company number (if any) and principal place of business of the applicant;
 - (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;
 - (d) a description of the proposed pipeline, loading facility or storage facility to be constructed or operated, including maps and diagrams where appropriate,
 - (e) a description of the tariff policies to be applied;
 - (f) the plans and the ability of the applicant to comply with applicable labour, health, safety, security and environmental legislation;
 - (g) the identity and particulars of the individual who will be responsible for the control, management and operation of the pipeline or facility in question; and
 - (h) such other particulars as may be prescribed by rule.
- (3) The applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to the concurrence of the

Authority, such information may be withheld from publicly available copies of the application. ([Click here to return.](#))

15. Activities requiring licence.—

- (1) A person may not, without a licence issued by the Authority—
 - (c) construct a petroleum pipeline, a loading facility or a storage facility; or
 - (d) operate a petroleum pipeline, a loading facility or a storage facility.
- (2) The Authority may—
 - (c) determine whether any person is engaged in any of the activities requiring a licence;
 - (d) 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.
- (3)
 - (a) Nothing in this Act precludes any potential licensee from discussing the contemplated construction or operation of petroleum pipelines, loading facilities or storage facilities with the Authority prior to filing a licence application.
 - (b) The Authority must furnish an applicant contemplated in paragraph (a) with all information that is necessary to facilitate the filing of an application in terms of this Act.
- (4) A request for further information, notification or discussions referred to in subsection (3) may not be construed as conferring any right or expectation upon an applicant.

16. Application for licence.—

- (4) Any person who has to apply for a licence in terms of section 15 must be the owner of the pipeline or facility in question and must do so in the form and in accordance with the procedure prescribed by rule, and an application must be accompanied by the application fee prescribed by rule.
- (5) Any application contemplated in subsection (1) must include—
 - (i) the name, company number (if any) and principal place of business of the applicant;
 - (j) particulars of the owners or shareholders of the applicant if the applicant is not a natural person;
 - (k) documents demonstrating the administrative, financial and technical abilities of the applicant;
 - (l) a description of the proposed pipeline, loading facility or storage facility to be constructed or operated, including maps and diagrams where appropriate,
 - (m) a description of the tariff policies to be applied;
 - (n) the plans and the ability of the applicant to comply with applicable labour, health, safety, security and environmental legislation;
 - (o) the identity and particulars of the individual who will be responsible for the control, management and operation of the pipeline or facility in question; and
 - (p) such other particulars as may be prescribed by rule.
- (6) The applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to the concurrence of the

Authority, such information may be withheld from publicly available copies of the application. ([Click here to return.](#))

15. Activities requiring licence.—

- (1) A person may not, without a licence issued by the Authority—
 - (e) construct a petroleum pipeline, a loading facility or a storage facility; or
 - (f) operate a petroleum pipeline, a loading facility or a storage facility.
- (2) The Authority may—
 - (e) determine whether any person is engaged in any of the activities requiring a licence;
 - (f) 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.
- (3)
 - (a) Nothing in this Act precludes any potential licensee from discussing the contemplated construction or operation of petroleum pipelines, loading facilities or storage facilities with the Authority prior to filing a licence application.
 - (b) The Authority must furnish an applicant contemplated in paragraph (a) with all information that is necessary to facilitate the filing of an application in terms of this Act.
- (4) A request for further information, notification or discussions referred to in subsection (3) may not be construed as conferring any right or expectation upon an applicant.

16. Application for licence.—

- (7) Any person who has to apply for a licence in terms of section 15 must be the owner of the pipeline or facility in question and must do so in the form and in accordance with the procedure prescribed by rule, and an application must be accompanied by the application fee prescribed by rule.
- (8) Any application contemplated in subsection (1) must include—
 - (q) the name, company number (if any) and principal place of business of the applicant;
 - (r) particulars of the owners or shareholders of the applicant if the applicant is not a natural person;
 - (s) documents demonstrating the administrative, financial and technical abilities of the applicant;
 - (t) a description of the proposed pipeline, loading facility or storage facility to be constructed or operated, including maps and diagrams where appropriate,
 - (u) a description of the tariff policies to be applied;
 - (v) the plans and the ability of the applicant to comply with applicable labour, health, safety, security and environmental legislation;
 - (w) the identity and particulars of the individual who will be responsible for the control, management and operation of the pipeline or facility in question; and
 - (x) such other particulars as may be prescribed by rule.
- (9) The applicant may request confidential treatment of commercially sensitive information contained in an application and, subject to the concurrence of the

Authority, such information may be withheld from publicly available copies of the application. ([Click here to return.](#))

19. Finalisation of application.—

- (1) The Authority must decide on an application within 60 days after—
 - (a) the expiration of the period contemplated in section 17 (2) (d), if no objections have been received; or
 - (b) receiving the response of the applicant as contemplated in section 18(c).
- (2) The Authority must provide the applicant with a copy of its decision as well as a list of the factors on which the decision was based.
- (3) The Authority may issue separate or combined licences for—
 - (a) the construction of petroleum pipelines or pipeline systems, loading facilities and storage facilities; and the operation of petroleum pipelines or pipeline systems, loading facilities and storage facilities. ([Click here to return](#)).

25. Contraventions.—

- (1) If a licensee contravenes or fails to comply with a condition of a licence or any provision of this Act, the Authority may serve a notice on such licensee in which the licensee is directed to comply with the condition or the provision of the Act within a reasonable period specified in the notice.
- (2) If a licensee fails to comply with a notice contemplated in subsection (1), the Authority may sit as a tribunal and, with due regard to section 10, decide on the matter and may impose a penalty or a fine not exceeding R2 000 000 per day for each day on which the contravention or failure to comply continues.
- (3) The Authority must consider the severity of the non-compliance when deciding the amount of any penalty.
- (4) The Minister may from time to time by notice in the Gazette amend the amount referred to in subsection (2) in order to counter the effect of inflation. ([Click here to return.](#))

23. Amendment of licence.—

- (1) The Authority may vary, suspend or remove any of the licence conditions, or may include additional conditions—
 - (a) on application by the licensee;
 - (b) with the permission of the licensee;
 - (c) upon non-compliance by a licensee with a licence condition;
 - (d) if it is necessary for the purposes of this Act;
 - (e) on application by any affected party;
 - (f) in the case of an emergency.

- (2) The procedure to be followed in varying, suspending, removing or adding any licence conditions must be prescribed by rule. ([Click here to return.](#))

23. Amendment of licence.—

- (1) The Authority may vary, suspend or remove any of the licence conditions, or may include additional conditions—
 - (a) on application by the licensee;
 - (b) with the permission of the licensee;
 - (c) upon non-compliance by a licensee with a licence condition;
 - (d) if it is necessary for the purposes of this Act;
 - (e) on application by any affected party;
 - (f) in the case of an emergency.

- (2) The procedure to be followed in varying, suspending, removing or adding any licence conditions must be prescribed by rule. ([Click here to return.](#))

24. Revocation of licence on application.—

- (1) The Authority may revoke a licence on the application of a licensee if—
 - (a) the licensed facility or activity is no longer required;
 - (b) the licensed facility or activity is not economically justifiable; or
 - (c) another person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person.
- (2) Licensees must give the Authority notice in writing, at least 12 months or such shorter period as the Authority may approve in advance, of their intention to cease their activities.
- (3) The form and procedure to be followed in revoking a licence under subsection (1) must be prescribed by rule. ([Click here to return.](#))

24. Revocation of licence on application

- (1) The Authority may revoke a licence on the application of a licensee if—
 - (d) the licensed facility or activity is no longer required;
 - (e) the licensed facility or activity is not economically justifiable; or
 - (f) another person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person.
- (2) Licensees must give the Authority notice in writing, at least 12 months or such shorter period as the Authority may approve in advance, of their intention to cease their activities.
- (3) The form and procedure to be followed in revoking a licence under subsection (1) must be prescribed by rule. ([Click here to return.](#))

24. Revocation of licence on application.—

- (3) The Authority may revoke a licence on the application of a licensee if—
 - (g) the licensed facility or activity is no longer required;
 - (h) the licensed facility or activity is not economically justifiable; or
 - (i) another person is willing and able to assume the rights and obligations of the licensee concerned in accordance with the requirements and objectives of this Act, and a new licence is issued to such person.
- (4) Licensees must give the Authority notice in writing, at least 12 months or such shorter period as the Authority may approve in advance, of their intention to cease their activities.
- (3) The form and procedure to be followed in revoking a licence under subsection (1) must be prescribed by rule. ([Click here to return.](#))

EXTRACT FROM THE NATIONAL ENERGY REGULATOR ACT

10. Decisions of Energy Regulator.—

- (1) Every decision of the Energy Regulator must be in writing and be—
 - (a) consistent with the Constitution and all applicable laws;
 - (b) in the public interest;
 - (c) within the powers of the Energy Regulator, as set out in this Act, the Electricity Act, the Gas Act and the Petroleum Pipelines Act;
 - (d) taken within a procedurally fair process in which affected persons have the opportunity to submit their views and present relevant facts and evidence to the Energy Regulator;
 - (e) based on reasons, facts and evidence that must be summarised and recorded; and
 - (f) explained clearly as to its factual and legal basis and the reasons therefor.
- (2) Any decision of the Energy Regulator and the reasons therefor must be available to the public except information that is protected in terms of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- (3) Any person may institute proceedings in the High Court for the judicial review of an administrative action by the Energy Regulator in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (4) (a) Any person affected by a decision of the Energy Regulator sitting as a tribunal may appeal to the High Court against such decision.

(b) The procedure applicable to an appeal from a decision of a magistrate's court in a civil matter applies, with the changes required by the context, to an appeal contemplated in paragraph (a). ([Click here to return.](#))

CHAPTER 1
GENERAL REQUIREMENTS FOR DOCUMENTS SUBMITTED TO
THE ENERGY REGULATOR

Addresses for submission of documents

2. Where in terms of these rules, documents must be -
 - (1) delivered by hand, they must be delivered at: **Kulawula House, 526 Vermeulen Street, Arcadia, Pretoria;**
 - (2) delivered by registered post, they must be sent to: **P O Box 40343, Arcadia, 0007;** and
 - (3) delivered electronically, they must be emailed to: pipelines@nersa.org.za

Days and times for submission of documents

3. Documents delivered by hand must be delivered to the Energy Regulator only from Monday to Friday, excluding public holidays, and from 8:30 to 15:30.

Request for confidential treatment of information submitted

4. (1) Any person who submits information to the Energy Regulator may request the confidential treatment of such information.
 - (2) Where a person requests the confidential treatment of information as contemplated in subrule (1) above, that person must -
 - (a) make the request in writing in the form specified in **Annexure A** and must provide all information specified therein; and
 - (b) clearly indicate and highlight those parts of the information submitted which the submitter considers to be confidential.
 - (3) A request for the confidential treatment of information must be delivered by hand or sent by registered post and may also be sent electronically to the addresses specified in rule 2.
 - (4) Subject to the concurrence of the Energy Regulator regarding the confidential nature of information submitted, such information may be withheld from the public.

- (5) The Energy Regulator will inform the applicant of its decision regarding the request for confidential treatment of information within 30 days from receipt of a request.
- (6) Information submitted to the Energy Regulator in terms of this rule will only be made available to the public in accordance with the Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

CHAPTER 2

APPLICATIONS AND OBJECTIONS TO LICENCE APPLICATIONS

Units of measure

5. All measurements must be expressed in metric units.

General requirements and procedure for applications made in terms of these rules

- 6.(1) All applications must -
 - (a) be indexed and paginated; and
 - (b) be signed and dated by the applicant or by a mandated representative of the applicant.
- (2) A mandated representative of the applicant as contemplated in subrule (1)(b) above must have intimate knowledge of the information provided in the application and must be able to attest to the accuracy of the information.
- (3) Applications contemplated in subrule (1) above must be delivered by hand or sent by registered post and may also be sent electronically.
- (4) Upon receipt of an application, the Energy Regulator will provide an applicant with an acknowledgement of receipt of an application that states –
 - (a) the date of receipt of the application;
 - (b) the type of application; and
 - (c) the tracking or reference number allocated to that application.

- (5) An applicant must provide any information that the Energy Regulator requests and that the Energy Regulator considers necessary to consider the application properly.

Application for a licence

Pre licence application procedure

7. (1) (a) An applicant for a licence must, where applicable and in accordance with rule 4, request the confidential treatment of information to be submitted as part of an application for a licence prior to officially submitting the application for consideration by the Energy Regulator.
- (b) Where a request for confidential treatment of information to be submitted as part of a licence application has been made, the applicant must officially submit its licence application only once a decision of the Energy Regulator regarding the request has been communicated to it.

Form, manner and content

- (2) An application for a licence must be made in writing, in the form specified in **Annexure B** and must contain all information specified therein.
- (3) The application contemplated in subrule (2) above must be accompanied by a non-confidential version compiled in accordance with the decision of the Energy Regulator made in terms of rule 4 of these rules.
- (4) Based on the Energy Regulator's assessment and evaluation of an application, an applicant may, in accordance with section 18(b) of the Act, be requested by the Energy Regulator to alter its application.
- (5) The official date of an application shall be the date on which the applicant submits all required information specified in these rules to the Energy Regulator.
- (6) The Energy Regulator will, within 14 days of receipt of an application, inform an applicant in writing whether or not the application meets the application requirements specified in these rules and is therefore accepted by the Energy Regulator.
- (7) An application for a licence, which does not contain all the required information specified in these rules, will be considered incomplete. If an application is incomplete, the Energy Regulator will issue the applicant with a Notice of an Incomplete Licence Application (**Annexure C**).

Publishing of a notice of an application for a licence and the contents thereof

8. (1) When an applicant for a licence has received confirmation from the Energy Regulator in terms of rule 7(6) that the application meets the application requirements and is accepted by the Energy Regulator, the applicant **must**, in accordance with section 17 of the Act, publish a notice of the application in at least two newspapers circulating in the area of the proposed activity.
- (2) The notice contemplated in subrule (1) above must be published on at least three different days and in any two of the official languages, one of which must be English.
- (3) The applicant must, for each of the days on which the notice contemplated in subrule (1) was published, immediately forward copies thereof to the Energy Regulator.
- (4) If the Energy Regulator deems it necessary considering the specific characteristics of an application, it may direct an applicant to publish the notice contemplated in this rule, in more than one issue of a newspaper but not exceeding four or on more than three days but not exceeding 6 days.
- (5) A notice of an application published in terms of this rule must comply with all requirements listed in section 17(2) of the Act and must –
 - (a) state that the licence application will be accessible to members of the public-
 - (i) from the date on which the notice is published until the closing date for objections, which date must not be earlier than 30 days from the last date of publication of the notice;
 - (ii) except on Saturdays, Sundays and public holidays and only during working hours:
 - (aa) at the offices of the applicant and must state the address, telephone number and the name of the contact person at the offices of the applicant;
 - (bb) at the offices of the Energy Regulator at the address specified in rule 2(1);
 - (iii) on the website of the applicant, where available; and
 - (iv) on the website of the Energy Regulator;
 - (b) state the application reference number issued by the Energy Regulator;
 - (c) indicate that the Energy Regulator will disregard objections received after the closing date; and
 - (d) state that-

- (i) persons who wish to lodge objections must do so by completing the form at **Annexure D** to these rules which is available on the website of the Energy Regulator or at the offices of the Energy Regulator at the address specified in rule 2(1); and
- (ii) objections must be delivered by hand or sent by registered post to the address stated in rule 2; and
- (iii) copies of objections may also be sent electronically to the address stated in rule 2.

Changes to an application for a licence.

9. (1) An applicant for a licence wanting to make changes to its licence application before the Energy Regulator has made a decision regarding its licence application, may request permission from the Energy Regulator to do so.
- (2) If the Energy Regulator deems the changes to be substantial, it may direct the applicant to publish a notice of an amendment to a licence application in the same newspapers and in the same languages as the notice of the application for a licence to be amended was published.
- (3) The notice published in terms of subrule (2) above must also comply with rule 8 of these rules.

Form and manner of an objection to an applicaiotn for a licence

- 10.(1) An objection to an application for a licence must be in the form specified in **Annexure D** and must contain all information specified therein.
- (2) An objector may, in accordance with rule 4, request the confidential treatment of information submitted as part of an objection.
- (3) An objection to an application must be delivered by hand OR sent by registered post and may also be sent electronically to the addresses stated in rule 2 of these rules.
- (4) An objection must be received by the Energy Regulator on or before the closing date of objections mentioned in a notice published in terms of rule 8 of these rules.
- (5) This rule, with the necessary changes, applies to an objection to an amended application for a licence.

Applicant's response to an objection to an application for a licence

11. An applicant must provide the Energy Regulator with a detailed response to an objection contemplated in rule 10 of these rules –

- (1) within 30 days of receipt from the Energy Regulator of the objections to its licence application; and
- (2) in writing, clearly stating the name of the objector, the date of the objection and the objection to which it is responding.

Application for an amendment for a licence

- 12.(1) A licensee or an affected party may apply to the Energy Regulator for an amendment of a licence.
- (2) An application for an amendment of a licence must be made in writing in the form specified in **Annexure E** and must contain all information specified therein
- (3) An applicant may, in accordance with rule 4 of these Rules, request confidential treatment of information submitted by it as part of an application for an amendment of a licence.
- (4) Where the applicant is a person other than the licensee -
 - (a) the Energy Regulator must provide the licensee with the non confidential version of the application for an amendment of its licence; and
 - (b) the licensee must provide the Energy Regulator with a written response to the application for an amendment to its licence within 30 days from receipt of information regarding the application for an amendment to its licence.
- (5) Where the amendment of a licence is at the instance of the Energy Regulator, the procedure outlined in either rule 14 or 15 of these Rules will, depending on the circumstances of each case, be followed.

Application for the revocation of a licence

- 13.(1) An application for the revocation of a licence must be made in writing to the Energy Regulator in the form specified in **Annexure F** and must contain all information specified therein.
- (2) An applicant may, in accordance with rule 4, request the confidential treatment of information submitted as part of an application for the revocation of a licence.
- (3) If the reason for ceasing the licensed activity is that another person is willing and able to assume the rights and obligations of the licensee in accordance with the requirements and objectives of the Act -
 - (a) the licensee must obtain and submit with the application an undertaking under oath by such other person to that effect; and
 - (b) such other person must apply for a new licence in accordance with the Act and these rules. ([Click here to return.](#))

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Days and times for submission of documents

3. Documents delivered by hand must be delivered to the Energy Regulator only from Monday to Friday, excluding public holidays, and from 8:30 to 15:30.

Request for confidential treatment of information submitted

4. (1) Any person who submits information to the Energy Regulator may request the confidential treatment of such information.
 - (2) Where a person requests the confidential treatment of information as contemplated in subrule (1) above, that person must -
 - (a) make the request in writing in the form specified in **Annexure A** and must provide all information specified therein; and
 - (b) clearly indicate and highlight those parts of the information submitted which the submitter considers to be confidential.
 - (3) A request for the confidential treatment of information must be delivered by hand or sent by registered post and may also be sent electronically to the addresses specified in rule 2.
 - (4) Subject to the concurrence of the Energy Regulator regarding the confidential nature of information submitted, such information may be withheld from the public.

- (5) The Energy Regulator will inform the applicant of its decision regarding the request for confidential treatment of information within 30 days from receipt of a request.
- (6) Information submitted to the Energy Regulator in terms of this rule will only be made available to the public in accordance with the Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

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APPLICATIONS AND OBJECTIONS TO LICENCE APPLICATIONS

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 - (d) the date of receipt of the application;
 - (e) the type of application; and
 - (f) the tracking or reference number allocated to that application.
- (5) An applicant must provide any information that the Energy Regulator requests and that the Energy Regulator considers necessary to consider the application properly.

Application for a licence

Pre licence application procedure

7. (1) (a) An applicant for a licence must, where applicable and in accordance with rule 4, request the confidential treatment of information to be submitted as part of an application for a licence prior to officially submitting the application for consideration by the Energy Regulator.
- (b) Where a request for confidential treatment of information to be submitted as part of a licence application has been made, the applicant must officially submit its licence application only once a decision of the Energy Regulator regarding the request has been communicated to it.

Form, manner and content

- (2) An application for a licence must be made in writing, in the form specified in **Annexure B** and must contain all information specified therein.
- (3) The application contemplated in subrule (2) above must be accompanied by a non-confidential version compiled in accordance with the decision of the Energy Regulator made in terms of rule 4 of these rules.
- (4) Based on the Energy Regulator's assessment and evaluation of an application, an applicant may, in accordance with section 18(b) of the Act, be requested by the Energy Regulator to alter its application.
- (5) The official date of an application shall be the date on which the applicant submits all required information specified in these rules to the Energy Regulator.
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accordance with section 17 of the Act, publish a notice of the application in at least two newspapers circulating in the area of the proposed activity.

- (2) The notice contemplated in subrule (1) above must be published on at least three different days and in any two of the official languages, one of which must be English.
- (3) The applicant must, for each of the days on which the notice contemplated in subrule (1) was published, immediately forward copies thereof to the Energy Regulator.
- (4) If the Energy Regulator deems it necessary considering the specific characteristics of an application, it may direct an applicant to publish the notice contemplated in this rule, in more than one issue of a newspaper but not exceeding four or on more than three days but not exceeding 6 days.
- (5) A notice of an application published in terms of this rule must comply with all requirements listed in section 17(2) of the Act and must –
 - (a) state that the licence application will be accessible to members of the public-
 - (i) from the date on which the notice is published until the closing date for objections, which date must not be earlier than 30 days from the last date of publication of the notice;
 - (ii) except on Saturdays, Sundays and public holidays and only during working hours:
 - (aa) at the offices of the applicant and must state the address, telephone number and the name of the contact person at the offices of the applicant;
 - (bb) at the offices of the Energy Regulator at the address specified in rule 2(1);
 - (iii) on the website of the applicant, where available; and
 - (iv) on the website of the Energy Regulator;
 - (b) state the application reference number issued by the Energy Regulator;
 - (c) indicate that the Energy Regulator will disregard objections received after the closing date; and
 - (d) state that-
 - (i) persons who wish to lodge objections must do so by completing the form at **Annexure D** to these rules which is available on the website of the Energy Regulator or at the offices of the Energy Regulator at the address specified in rule 2(1); and

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- (3) The notice published in terms of subrule (2) above must also comply with rule 8 of these rules.

Form and manner of an objection to an applicaiotn for a licence

- 10.(1) An objection to an application for a licence must be in the form specified in **Annexure D** and must contain all information specified therein.
- (2) An objector may, in accordance with rule 4, request the confidential treatment of information submitted as part of an objection.
- (3) An objection to an application must be delivered by hand OR sent by registered post and may also be sent electronically to the addresses stated in rule 2 of these rules.
- (4) An objection must be received by the Energy Regulator on or before the closing date of objections mentioned in a notice published in terms of rule 8 of these rules.
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Application for an amendment for a licence

- 12.(1) A licensee or an affected party may apply to the Energy Regulator for an amendment of a licence.
- (2) An application for an amendment of a licence must be made in writing in the form specified in **Annexure E** and must contain all information specified therein
- (3) An applicant may, in accordance with rule 4 of these Rules, request confidential treatment of information submitted by it as part of an application for an amendment of a licence.
- (4) Where the applicant is a person other than the licensee -
- (a) the Energy Regulator must provide the licensee with the non confidential version of the application for an amendment of its licence; and
 - (b) the licensee must provide the Energy Regulator with a written response to the application for an amendment to its licence within 30 days from receipt of information regarding the application for an amendment to its licence.
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Application for the revocation of a licence

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- (3) If the reason for ceasing the licensed activity is that another person is willing and able to assume the rights and obligations of the licensee in accordance with the requirements and objectives of the Act -
- (a) the licensee must obtain and submit with the application an undertaking under oath by such other person to that effect; and
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 - (2) Where a person requests the confidential treatment of information as contemplated in subrule (1) above, that person must -
 - (a) make the request in writing in the form specified in **Annexure A** and must provide all information specified therein; and
 - (b) clearly indicate and highlight those parts of the information submitted which the submitter considers to be confidential.
 - (3) A request for the confidential treatment of information must be delivered by hand or sent by registered post and may also be sent electronically to the addresses specified in rule 2.
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Form, manner and content

- (2) An application for a licence must be made in writing, in the form specified in **Annexure B** and must contain all information specified therein.
- (3) The application contemplated in subrule (2) above must be accompanied by a non-confidential version compiled in accordance with the decision of the Energy Regulator made in terms of rule 4 of these rules.
- (4) Based on the Energy Regulator's assessment and evaluation of an application, an applicant may, in accordance with section 18(b) of the Act, be requested by the Energy Regulator to alter its application.
- (5) The official date of an application shall be the date on which the applicant submits all required information specified in these rules to the Energy Regulator.
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 - (aa) at the offices of the applicant and must state the address, telephone number and the name of the contact person at the offices of the applicant;
 - (bb) at the offices of the Energy Regulator at the address specified in rule 2(1);
 - (iii) on the website of the applicant, where available; and
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- (i) persons who wish to lodge objections must do so by completing the form at **Annexure D** to these rules which is available on the website of the Energy Regulator or at the offices of the Energy Regulator at the address specified in rule 2(1); and
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- (iii) copies of objections may also be sent electronically to the address stated in rule 2.

Changes to an application for a licence.

9. (1) An applicant for a licence wanting to make changes to its licence application before the Energy Regulator has made a decision regarding its licence application, may request permission from the Energy Regulator to do so.
- (2) If the Energy Regulator deems the changes to be substantial, it may direct the applicant to publish a notice of an amendment to a licence application in the same newspapers and in the same languages as the notice of the application for a licence to be amended was published.
- (3) The notice published in terms of subrule (2) above must also comply with rule 8 of these rules.

Form and manner of an objection to an applicaiotn for a licence

- 10.(1) An objection to an application for a licence must be in the form specified in **Annexure D** and must contain all information specified therein.
- (2) An objector may, in accordance with rule 4, request the confidential treatment of information submitted as part of an objection.
- (3) An objection to an application must be delivered by hand OR sent by registered post and may also be sent electronically to the addresses stated in rule 2 of these rules.
- (4) An objection must be received by the Energy Regulator on or before the closing date of objections mentioned in a notice published in terms of rule 8 of these rules.
- (5) This rule, with the necessary changes, applies to an objection to an amended application for a licence.

Applicant's response to an objection to an application for a licence

11. An applicant must provide the Energy Regulator with a detailed response to an objection contemplated in rule 10 of these rules –
- (1) within 30 days of receipt from the Energy Regulator of the objections to its licence application; and
 - (2) in writing, clearly stating the name of the objector, the date of the objection and the objection to which it is responding.

Application for an amendment for a licence

- 12.(1) A licensee or an affected party may apply to the Energy Regulator for an amendment of a licence.
- (2) An application for an amendment of a licence must be made in writing in the form specified in **Annexure E** and must contain all information specified therein
 - (3) An applicant may, in accordance with rule 4 of these Rules, request confidential treatment of information submitted by it as part of an application for an amendment of a licence.
 - (4) Where the applicant is a person other than the licensee -
 - (a) the Energy Regulator must provide the licensee with the non confidential version of the application for an amendment of its licence; and
 - (b) the licensee must provide the Energy Regulator with a written response to the application for an amendment to its licence within 30 days from receipt of information regarding the application for an amendment to its licence.
 - (5) Where the amendment of a licence is at the instance of the Energy Regulator, the procedure outlined in either rule 14 or 15 of these Rules will, depending on the circumstances of each case, be followed.

Application for the revocation of a licence

- 13.(1) An application for the revocation of a licence must be made in writing to the Energy Regulator in the form specified in **Annexure F** and must contain all information specified therein.
- (2) An applicant may, in accordance with rule 4, request the confidential treatment of information submitted as part of an application for the revocation of a licence.
 - (3) If the reason for ceasing the licensed activity is that another person is willing and able to assume the rights and obligations of the licensee in accordance with the requirements and objectives of the Act -

- (a) the licensee must obtain and submit with the application an undertaking under oath by such other person to that effect; and
- (b) such other person must apply for a new licence in accordance with the Act and these rules.

CHAPTER 3

CONSULTATION WITH AFFECTED AND INTERESTED PARTIES

Administrative action affecting any person

14. (1) The Energy Regulator must, where its administrative action might materially and adversely affect the rights or legitimate expectations of any person, call for written submission of relevant views, facts and evidence.
- (2) The call for written representations must be published on the Energy Regulator's web site and on a public notice board outside the Energy Regulator's offices.
- (3) If considered appropriate by the Energy Regulator and where persons concerned can be readily identified, notices of the call for written representations may be communicated by the Energy Regulator directly to such persons.
- (4) For purposes of this rule, the Energy Regulator must give at least 14 days' notice of the deadline for written representations and must comply with section 3 of the Promotion of Administrative Justice Act.
- (5) Written representations submitted in terms to this rule 14 must be submitted together with an affidavit signed by the submitter or a mandated representative confirming that the information submitted is true and correct.

Administrative action affecting the public

15. (1) Where an administrative action of the Energy Regulator might materially and adversely affect the rights of the public, the Energy Regulator will follow the procedure outlined in section 4 of the Promotion of Administrative Justice Act and Regulations made in terms thereof.
- (2) Where the Energy Regulator chooses to hold a public hearing as contemplated in regulation 11 of the regulations made in terms of the Promotion of Administrative Justice Act, the Energy Regulator must give notice of the public hearing at least 7 days before the date of the hearing.
- (3) Written representations submitted in terms to this rule 15 must be submitted together with an affidavit signed by the submitter or a mandated representative

confirming that the information submitted is true and correct. ([Click here to return.](#))

CHAPTER 1
GENERAL REQUIREMENTS FOR DOCUMENTS SUBMITTED TO
THE ENERGY REGULATOR

Addresses for submission of documents

2. Where in terms of these rules, documents must be -
- (4) delivered by hand, they must be delivered at: **Kulawula House, 526 Vermeulen Street, Arcadia, Pretoria;**
 - (5) delivered by registered post, they must be sent to: **P O Box 40343, Arcadia, 0007;** and
 - (6) delivered electronically, they must be emailed to: pipelines@nersa.org.za

Days and times for submission of documents

3. Documents delivered by hand must be delivered to the Energy Regulator only from Monday to Friday, excluding public holidays, and from 8:30 to 15:30.

Request for confidential treatment of information submitted

4. (1) Any person who submits information to the Energy Regulator may request the confidential treatment of such information.
- (2) Where a person requests the confidential treatment of information as contemplated in subrule (1) above, that person must -
- (a) make the request in writing in the form specified in **Annexure A** and must provide all information specified therein; and
 - (b) clearly indicate and highlight those parts of the information submitted which the submitter considers to be confidential.
- (3) A request for the confidential treatment of information must be delivered by hand or sent by registered post and may also be sent electronically to the addresses specified in rule 2.
- (4) Subject to the concurrence of the Energy Regulator regarding the confidential nature of information submitted, such information may be withheld from the public.

- (5) The Energy Regulator will inform the applicant of its decision regarding the request for confidential treatment of information within 30 days from receipt of a request.
- (6) Information submitted to the Energy Regulator in terms of this rule will only be made available to the public in accordance with the Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

CHAPTER 2

APPLICATIONS AND OBJECTIONS TO LICENCE APPLICATIONS

Units of measure

5. All measurements must be expressed in metric units.

General requirements and procedure for applications made in terms of these rules

- 6.(1) All applications must -
 - (a) be indexed and paginated; and
 - (b) be signed and dated by the applicant or by a mandated representative of the applicant.
- (2) A mandated representative of the applicant as contemplated in subrule (1)(b) above must have intimate knowledge of the information provided in the application and must be able to attest to the accuracy of the information.
- (3) Applications contemplated in subrule (1) above must be delivered by hand or sent by registered post and may also be sent electronically.
- (4) Upon receipt of an application, the Energy Regulator will provide an applicant with an acknowledgement of receipt of an application that states –
 - (a) the date of receipt of the application;
 - (b) the type of application; and
 - (c) the tracking or reference number allocated to that application.

- (5) An applicant must provide any information that the Energy Regulator requests and that the Energy Regulator considers necessary to consider the application properly.

Application for a licence

Pre licence application procedure

7. (1) (a) An applicant for a licence must, where applicable and in accordance with rule 4, request the confidential treatment of information to be submitted as part of an application for a licence prior to officially submitting the application for consideration by the Energy Regulator.
 - (b) Where a request for confidential treatment of information to be submitted as part of a licence application has been made, the applicant must officially submit its licence application only once a decision of the Energy Regulator regarding the request has been communicated to it.

Form, manner and content

- (2) An application for a licence must be made in writing, in the form specified in **Annexure B** and must contain all information specified therein.
- (3) The application contemplated in subrule (2) above must be accompanied by a non-confidential version compiled in accordance with the decision of the Energy Regulator made in terms of rule 4 of these rules.
- (4) Based on the Energy Regulator's assessment and evaluation of an application, an applicant may, in accordance with section 18(b) of the Act, be requested by the Energy Regulator to alter its application.
- (5) The official date of an application shall be the date on which the applicant submits all required information specified in these rules to the Energy Regulator.
- (6) The Energy Regulator will, within 14 days of receipt of an application, inform an applicant in writing whether or not the application meets the application requirements specified in these rules and is therefore accepted by the Energy Regulator.
- (7) An application for a licence, which does not contain all the required information specified in these rules, will be considered incomplete. If an application is incomplete, the Energy Regulator will issue the applicant with a Notice of an Incomplete Licence Application (**Annexure C**).

Publishing of a notice of an application for a licence and the contents thereof

8. (1) When an applicant for a licence has received confirmation from the Energy Regulator in terms of rule 7(6) that the application meets the application requirements and is accepted by the Energy Regulator, the applicant **must**, in accordance with section 17 of the Act, publish a notice of the application in at least two newspapers circulating in the area of the proposed activity.
- (2) The notice contemplated in subrule (1) above must be published on at least three different days and in any two of the official languages, one of which must be English.
- (3) The applicant must, for each of the days on which the notice contemplated in subrule (1) was published, immediately forward copies thereof to the Energy Regulator.
- (4) If the Energy Regulator deems it necessary considering the specific characteristics of an application, it may direct an applicant to publish the notice contemplated in this rule, in more than one issue of a newspaper but not exceeding four or on more than three days but not exceeding 6 days.
- (5) A notice of an application published in terms of this rule must comply with all requirements listed in section 17(2) of the Act and must –
 - (a) state that the licence application will be accessible to members of the public-
 - (i) from the date on which the notice is published until the closing date for objections, which date must not be earlier than 30 days from the last date of publication of the notice;
 - (ii) except on Saturdays, Sundays and public holidays and only during working hours:
 - (aa) at the offices of the applicant and must state the address, telephone number and the name of the contact person at the offices of the applicant;
 - (bb) at the offices of the Energy Regulator at the address specified in rule 2(1);
 - (iii) on the website of the applicant, where available; and
 - (iv) on the website of the Energy Regulator;
 - (b) state the application reference number issued by the Energy Regulator;
 - (c) indicate that the Energy Regulator will disregard objections received after the closing date; and
 - (d) state that-

- (i) persons who wish to lodge objections must do so by completing the form at **Annexure D** to these rules which is available on the website of the Energy Regulator or at the offices of the Energy Regulator at the address specified in rule 2(1); and
- (ii) objections must be delivered by hand or sent by registered post to the address stated in rule 2; and
- (iii) copies of objections may also be sent electronically to the address stated in rule 2.

Changes to an application for a licence.

9. (1) An applicant for a licence wanting to make changes to its licence application before the Energy Regulator has made a decision regarding its licence application, may request permission from the Energy Regulator to do so.
- (2) If the Energy Regulator deems the changes to be substantial, it may direct the applicant to publish a notice of an amendment to a licence application in the same newspapers and in the same languages as the notice of the application for a licence to be amended was published.
- (3) The notice published in terms of subrule (2) above must also comply with rule 8 of these rules.

Form and manner of an objection to an applicaiotn for a licence

- 10.(1) An objection to an application for a licence must be in the form specified in **Annexure D** and must contain all information specified therein.
- (2) An objector may, in accordance with rule 4, request the confidential treatment of information submitted as part of an objection.
- (3) An objection to an application must be delivered by hand OR sent by registered post and may also be sent electronically to the addresses stated in rule 2 of these rules.
- (4) An objection must be received by the Energy Regulator on or before the closing date of objections mentioned in a notice published in terms of rule 8 of these rules.
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Applicant's response to an objection to an application for a licence

11. An applicant must provide the Energy Regulator with a detailed response to an objection contemplated in rule 10 of these rules –

- (1) within 30 days of receipt from the Energy Regulator of the objections to its licence application; and
- (2) in writing, clearly stating the name of the objector, the date of the objection and the objection to which it is responding.

Application for an amendment for a licence

- 12.(1) A licensee or an affected party may apply to the Energy Regulator for an amendment of a licence.
- (2) An application for an amendment of a licence must be made in writing in the form specified in **Annexure E** and must contain all information specified therein.
- (3) An applicant may, in accordance with rule 4 of these Rules, request confidential treatment of information submitted by it as part of an application for an amendment of a licence.
- (4) Where the applicant is a person other than the licensee -
 - (a) the Energy Regulator must provide the licensee with the non confidential version of the application for an amendment of its licence; and
 - (b) the licensee must provide the Energy Regulator with a written response to the application for an amendment to its licence within 30 days from receipt of information regarding the application for an amendment to its licence.
- (5) Where the amendment of a licence is at the instance of the Energy Regulator, the procedure outlined in either rule 14 or 15 of these Rules will, depending on the circumstances of each case, be followed.

Application for the revocation of a licence

- 13.(1) An application for the revocation of a licence must be made in writing to the Energy Regulator in the form specified in **Annexure F** and must contain all information specified therein
- (2) An applicant may, in accordance with rule 4, request confidential treatment of information submitted as part of an application for the revocation
- (3) If the reason for ceasing the licensed activity is that another person is willing and able to assume the rights and obligations of the licensee in accordance with the requirements and objectives of the Act -
 - (a) the licensee must obtain and submit with the application an undertaking under oath by such other person to that effect; and

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CHAPTER 3

CONSULTATION WITH AFFECTED AND INTERESTED PARTIES

Administrative action affecting any person

14. (2) The Energy Regulator must, where its administrative action might materially and adversely affect the rights or legitimate expectations of any person, call for written submission of relevant views, facts and evidence.
- (6) The call for written representations must be published on the Energy Regulator's web site and on a public notice board outside the Energy Regulator's offices.
- (7) If considered appropriate by the Energy Regulator and where persons concerned can be readily identified, notices of the call for written representations may be communicated by the Energy Regulator directly to such persons.
- (8) For purposes of this rule, the Energy Regulator must give at least 14 days' notice of the deadline for written representations and must comply with section 3 of the Promotion of Administrative Justice Act.
- (9) Written representations submitted in terms to this rule 14 must be submitted together with an affidavit signed by the submitter or a mandated representative confirming that the information submitted is true and correct.

Administrative action affecting the public

15. (2) Where an administrative action of the Energy Regulator might materially and adversely affect the rights of the public, the Energy Regulator will follow the procedure outlined in section 4 of the Promotion of Administrative Justice Act and Regulations made in terms thereof.
- (4) Where the Energy Regulator chooses to hold a public hearing as contemplated in regulation 11 of the regulations made in terms of the Promotion of Administrative Justice Act, the Energy Regulator must give notice of the public hearing at least 7 days before the date of the hearing.
- (5) Written representations submitted in terms to this rule 15 must be submitted

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Days and times for submission of documents

3. Documents delivered by hand must be delivered to the Energy Regulator only from Monday to Friday, excluding public holidays, and from 8:30 to 15:30.

Request for confidential treatment of information submitted

4. (1) Any person who submits information to the Energy Regulator may request the confidential treatment of such information.
 - (2) Where a person requests the confidential treatment of information as contemplated in subrule (1) above, that person must -
 - (a) make the request in writing in the form specified in **Annexure A** and must provide all information specified therein; and
 - (b) clearly indicate and highlight those parts of the information submitted which the submitter considers to be confidential.
 - (3) A request for the confidential treatment of information must be delivered by hand or sent by registered post and may also be sent electronically to the addresses specified in rule 2.
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- 6.(1) All applications must -
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Application for a licence

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Form, manner and content

- (2) An application for a licence must be made in writing, in the form specified in **Annexure B** and must contain all information specified therein.
- (3) The application contemplated in subrule (2) above must be accompanied by a non-confidential version compiled in accordance with the decision of the Energy Regulator made in terms of rule 4 of these rules.
- (4) Based on the Energy Regulator's assessment and evaluation of an application, an applicant may, in accordance with section 18(b) of the Act, be requested by the Energy Regulator to alter its application.
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accordance with section 17 of the Act, publish a notice of the application in at least two newspapers circulating in the area of the proposed activity.

- (2) The notice contemplated in subrule (1) above must be published on at least three different days and in any two of the official languages, one of which must be English.
- (3) The applicant must, for each of the days on which the notice contemplated in subrule (1) was published, immediately forward copies thereof to the Energy Regulator.
- (4) If the Energy Regulator deems it necessary considering the specific characteristics of an application, it may direct an applicant to publish the notice contemplated in this rule, in more than one issue of a newspaper but not exceeding four or on more than three days but not exceeding 6 days.
- (5) A notice of an application published in terms of this rule must comply with all requirements listed in section 17(2) of the Act and must –
 - (a) state that the licence application will be accessible to members of the public-
 - (i) from the date on which the notice is published until the closing date for objections, which date must not be earlier than 30 days from the last date of publication of the notice;
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 - (aa) at the offices of the applicant and must state the address, telephone number and the name of the contact person at the offices of the applicant;
 - (bb) at the offices of the Energy Regulator at the address specified in rule 2(1);
 - (iii) on the website of the applicant, where available; and
 - (iv) on the website of the Energy Regulator;
 - (b) state the application reference number issued by the Energy Regulator;
 - (c) indicate that the Energy Regulator will disregard objections received after the closing date; and
 - (d) state that-
 - (i) persons who wish to lodge objections must do so by completing the form at **Annexure D** to these rules which is available on the website of the Energy Regulator or at the offices of the Energy Regulator at the address specified in rule 2(1); and

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Applicant's response to an objection to an application for a licence

11. An applicant must provide the Energy Regulator with a detailed response to an objection contemplated in rule 10 of these rules –
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- (5) in writing, clearly stating the name of the objector, the date of the objection and the objection to which it is responding.

Application for an amendment for a licence

- 12.(1) A licensee or an affected party may apply to the Energy Regulator for an amendment of a licence.
- (2) An application for an amendment of a licence must be made in writing in the form specified in **Annexure E** and must contain all information specified therein
- (3) An applicant may, in accordance with rule 4 of these Rules, request confidential treatment of information submitted by it as part of an application for an amendment of a licence.
- (4) Where the applicant is a person other than the licensee -
 - (a) the Energy Regulator must provide the licensee with the non confidential version of the application for an amendment of its licence; and
 - (b) the licensee must provide the Energy Regulator with a written response to the application for an amendment to its licence within 30 days from receipt of information regarding the application for an amendment to its licence.
- (5) Where the amendment of a licence is at the instance of the Energy Regulator, the procedure outlined in either rule 14 or 15 of these Rules will, depending on the circumstances of each case, be followed.

Application for the revocation of a licence

- 13.(1) An application for the revocation of a licence must be made in writing to the Energy Regulator in the form specified in **Annexure F** and must contain all information specified therein.
- (2) An applicant may, in accordance in accordance with rule 4, request the confidential treatment of information submitted as part of an application for the revocation of a licence.
- (3) If the reason for ceasing the licensed activity is that another person is willing and able to assume the rights and obligations of the licensee in accordance with the requirements and objectives of the Act –
 - a) The licensee must obtain and submit with the application an undertaking under oath by such other person to that effect; and
 - b) Such other person must apply for a new licence in accordance with the Act and these rules. (Click here to return.)

CHAPTER 3
CONSULTATION WITH AFFECTED AND INTERESTED PARTIES

Administrative action affecting any person

14. (3) The Energy Regulator must, where its administrative action might materially and adversely affect the rights or legitimate expectations of any person, call for written submission of relevant views, facts and evidence.
- (10) The call for written representations must be published on the Energy Regulator's web site and on a public notice board outside the Energy Regulator's offices.
- (11) If considered appropriate by the Energy Regulator and where persons concerned can be readily identified, notices of the call for written representations may be communicated by the Energy Regulator directly to such persons.
- (12) For purposes of this rule, the Energy Regulator must give at least 14 days' notice of the deadline for written representations and must comply with section 3 of the Promotion of Administrative Justice Act.
- (13) Written representations submitted in terms to this rule 14 must be submitted together with an affidavit signed by the submitter or a mandated representative confirming that the information submitted is true and correct.

Administrative action affecting the public

15. (3) Where an administrative action of the Energy Regulator might materially and adversely affect the rights of the public, the Energy Regulator will follow the procedure outlined in section 4 of the Promotion of Administrative Justice Act and Regulations made in terms thereof.
- (6) Where the Energy Regulator chooses to hold a public hearing as contemplated in regulation 11 of the regulations made in terms of the Promotion of Administrative Justice Act, the Energy Regulator must give notice of the public hearing at least 7 days before the date of the hearing.
- (7) Written representations submitted in terms to this rule 15 must be submitted together with an affidavit signed by the submitter or a mandated representative confirming that the information submitted is true and correct. ([Click here to return.](#))

Regulations - Tariffs

Section 4

Setting of tariffs for petroleum pipelines

4. (1) The Authority may, when setting tariffs for petroleum pipelines—
 - (a) require tariffs to follow the general principle of increasing with increasing distance over which petroleum products are or will be transported;
 - (b) consider batch size;
 - (c) consider funding requirements and debt service requirements of the licensee by adjusting the licensee's allowed revenue to enable the licensee's debt service cover ratio to be maintained at a reasonable level; and
 - (d) consider any other relevant matter.
- (2) The tariffs set by the Authority must enable an efficient licensee to—
 - (a) recover the reasonable operational and maintenance expenses of the pipeline in the year in which they are incurred;
 - (b) recover capital investment and make profit thereon commensurate with the risk; and
 - (c) rehabilitate land used in connection with a licensed activity.
- (3) If the recovery of expenses contemplated in sub-regulation (2) (a) results in an increase of real tariffs by more than 10%, the Authority may direct that the recovery of such expenses be effected over a period of more than a year.
- (4) The tariffs set by the Authority must relate to investment in, operation and maintenance of and profits arising only from those parts of a licensed activity for which tariffs are being set.
- (5) The allowable rate of return for licensees must be determined by using the expected efficient weighted average cost of capital (WACC). WACC must be calculated using the weighted average of the licensee's-
 - (a) average cost of debt that can realistically be attained during the period under review; and
 - (b) cost of equity capital calculated by means of the capital asset pricing model or any other appropriate model.
- (6) The allowed revenue to be derived from tariffs contemplated in sub-regulation (2) must include—
 - (a) reasonable operating expenses;
 - (b) reasonable maintenance expenses;
 - (c) depreciation expenses;
 - (d) reasonable working capital;
 - (e) reasonable real return on the regulatory asset base which should be determined based on the assets' inflation-adjusted historical cost less accumulated depreciation; and
 - (f) other applicable obligations.
- (7) The regulatory asset base contemplated in Regulation 4 (6) (e) must-
 - (a) be calculated as the total investment in the regulatory asset base;

- (b) for assets in operation at the time of promulgation of these Regulations and for which historical cost records do not exist, an estimated value that the Authority accepts as most closely approximating their historical cost; and
 - (c) include only those assets that are prudently acquired.
- (8) In determining depreciation expenses, the Authority must, except in cases where deemed inappropriate—
- (a) use a straight line methodology; and
 - (b) depreciate all assets over their useful life.
- (9) The Authority must as appropriate-
- (a) for a period between 3 and 5 years, adjust pipeline tariffs in a manner that seeks to-
 - i. take into account rising operating and maintenance costs; and
 - ii. increase efficiency of the operation of the pipeline; and
 - (b) at the end of period contemplated in sub-regulation (a), or any other time if the need arises, conduct a comprehensive tariff setting exercise in the manner contemplated in sub-regulation (2).

Section 5

Approval of tariffs for loading and storage facilities

5. (1) The Authority must, when approving tariffs for storage facilities and loading facilities, consider—
- (a) batch size;
 - (b) the capacity to take petroleum into a storage facility and the capacity to discharge petroleum from that facility;
 - (c) the throughput capacity of loading facilities; and
 - (d) any other relevant matter.
- (2) The provisions of regulations 4(2), 4(3), 4(4), 4(5), 4(6), 4(7) and 4(9) apply, subject to the changes required by the context, to the approval of tariffs for loading and storage facilities.
- (3) The Authority may require licensees to provide copies of contracts signed with customers.

Section 9

Rehabilitation of land

9. (1) Licensees must, not less than six months prior to termination, relinquishment or abandonment of licensed activities, submit to the Authority a plan for approval for the closure, removal and disposal, as the case may be, of all installations relating to such licensed activities.
- (2) The plan contemplated in sub-regulation (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 licensed activity concerned.
- (3) The Authority may approve the plan contemplated in sub-regulation (1) subject to any condition or amendment that the Authority may determine.
 - (4) The Authority must require the licensee to provide financial security for purposes of rehabilitating land used in connection with a licensed activity and the composition and amount of such security.
 - (5) Financial security contemplated in sub-regulation (4) may be in any form acceptable to the Authority and may only be used with the approval of the Authority.
 - (6) The Authority may, in writing, at any time, require written confirmation 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 Authority may require written proof from the licensee that the authority responsible for administering the Act referred to in sub-regulation (6) has approved the environmental impact assessment required by the Act in question.
 - (8) The Authority may not, 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, give consent to the termination of a financial security arrangement contemplated in sub-regulations (4) and (5). ([Click here to return.](#))

Regulation – Confidential information

Rule 4

Request for confidential treatment of information submitted

- 4.(1) Any person who submits information to the Energy Regulator may request the confidential treatment of such information.
- (2) Where a person requests the confidential treatment of information as contemplated in subrule (1) above, that person must -
 - a. make the request in writing in the form specified in [Annexure A](#) and must provide all information specified therein; and
 - b. clearly indicate and highlight those parts of the information submitted which the submitter considers to be confidential.
- (3) A request for the confidential treatment of information must be delivered by hand or sent by registered post and may also be sent electronically to the addresses specified in rule 2.
- (4) Subject to the concurrence of the Energy Regulator regarding the confidential nature of information submitted, such information may be withheld from the public.
- (5) The Energy Regulator will inform the applicant of its decision regarding the request for confidential treatment of information within 30 days from receipt of a request.
- (6) Information submitted to the Energy Regulator in terms of this rule will only be made available to the public in accordance with the Act or the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

[Annexure A](#)

[\(Click here to return.\)](#)