

Piped Gas Regulation

Gas Licensing, Compliance & Dispute Resolution

Procedure for Processing of Applications for Revocation of Licenses

Procedure # 2/GLC of 2011

1. PURPOSE

The purpose of this document is to outline the procedure to be followed by staff in the Gas Licensing, Compliance and Dispute Resolution Department (GLC) in the processing of applications for the revocation of licenses in terms of section 25(1) of the Gas Act No. 48 of 2001 (“the Gas Act”). The procedure will assist staff members to understand the steps to follow in processing applications for revocation of licenses and ensure that staff adheres to the requirements of the Gas Act, Gas Act Rules and Piped Gas Regulations. It will also ensure that statutory deadlines are observed and that proper and complete records on each application are kept.

2. PROBLEM STATEMENT

- 2.1 The Gas Act provides for the revocation of licenses by the Energy Regulator under the specific circumstances set out in section 25(1)(a) to (c) of the Act.
- 2.2 In this regard, section 25(3) provides that *“the form and procedure to be followed in revoking a licence under subsection (1) is as prescribed”*.
- 2.3 However, neither the Gas Act Rules nor the Piped Gas Regulations specifically provide for any procedure to be followed by the Energy Regulator in processing applications for revocation of licenses in terms of section 25(1).
- 2.4 Instead, rule 13 of the Rules in terms of the Gas Act merely prescribes the form in which applications for licence revocation should be submitted as well as what is to be contained in such form.
- 2.5 Consequently, the procedure to be followed in the processing of applications for revocation of licenses remains undetermined.
- 2.6 This document is accordingly meant to address this problem and fill the void created by the absence of proper procedures to be followed in the revocation of licence applications in terms of section 25(1) of the Gas Act.

3. IMPORTANT DOCUMENTS

- 3.1 The documents to be prepared in the course of processing an application for revocation of a licence in terms of this procedure are:
 - a) A submission with recommendations regarding a request by an applicant for confidential treatment of information contained in its application (If any);
 - b) An application adequacy report;
 - c) Request for additional information/ clarification from any relevant person (where applicable);
 - d) A call for written representations, an invitation for written comments or notice for public hearing, as the case may be;
 - e) Letter(s) informing interested and/or affected person(s) (if any) about the public hearing;

- f) An Aide Memoire (if there will be a public hearing);
- g) A submission introducing the application to the relevant Sub-committee;
- h) Draft Reasons for Decision;

4. DETAILED PROCEDURE

Step 1

Scanning, archiving and acknowledgment of receipt of application
(*within 7 working days from date of receipt*)

Step 2

Allocation of a licence application to Application Processor (AP)
(*within 3 working days after the application has been scanned and archived*)

Step 3

Processing Confidentiality request (see Annexure "F")
(*Within 30 days from date of receipt of the application*)

Step 4

Adequacy and completeness assessment
(within 14 days)

- Check if application has been submitted on prescribed form ANNEXURE F
- Draft the adequacy report for discussion with HoD and necessary signing
- If application contains insufficient information, request additional information from relevant person(s)
- Inform applicant of the procedure that will be followed in processing the application
- Also inform relevant customers, potential customers and other persons likely to be affected by the proposed revocation of the received revocation application, and advise them of the procedure that will be followed in processing the application.

Step 5

Consultation with affected/interested parties

A. IF THE PROPOSED REVOCATION AFFECTS THE RIGHTS OF ANY PERSON:

- a) Draft the call for written representations –
 - containing a clear statement that it relates to proposed/intended revocation;
 - setting out the nature and purpose of the proposed revocation; and

- o giving at least 14 days to affected person(s) to submit representations of relevant views, facts and evidence to the Energy Regulator.
- b) Publish one copy of the call for written representations on NERSA's website, and another on the public notice board outside NERSA's offices.
- c) Also communicate the call for written representations directly to the affected person(s), (if considered appropriate and such person is readily identifiable).

B. IF THE PROPOSED REVOCATION AFFECTS THE RIGHTS OF THE PUBLIC –

- a) Hold a public hearing; or follow the notice and comment procedure; or do both.

a. Public Hearing

- Prepare an Aid Memoire;
- Generate an advert for public hearing and advertise the application at least seven (7) days before the date of the public hearing;
- Inform and invite the applicant, and any other parties likely to be affected, to the public hearing;
- Conduct the public hearing;
- Prepare and submit the following documents to the relevant subcommittee:
 - o Submission for approval/decision on the application; and
 - o Reasons for Decision

b. Notice and comment procedure

- Prepare a written invitation for public comments in at least 2 official languages taking into account the language preferences and usages in the province or area concerned (see Annexure "C")
- Publish this invitation as follows –
 - o If the proposed revocation affects the rights of the public throughout South Africa: In the Government Gazette and 1 national newspaper OR in newspapers which collectively are distributed throughout South Africa;
 - o If the proposed revocation affects the rights of the public in a particular province only: In the Provincial Gazette of that particular province and 1 newspaper distributed throughout that province OR in newspapers which collectively are distributed throughout that province; or
 - o If the proposed revocation affects the rights of the public in a specific area only: in 1 newspaper which is distributed in that specific area.
- Furthermore (and if considered necessary to ensure that the public is aware of the proposed revocation, or where the significant proportion of people in a particular community cannot read or write), invite public comments by way of –
 - o issuing press releases;

- radio or television broadcasts; or
- holding public or group meetings in the community concerned to explain the proposed action and/or providing a secretarial facility in the community where members of the community can state their views on the proposed action.
- In 3 to 5 days before lapse of the public comments period and if no comments have yet been received from those likely to be affected by the proposed revocation, do an appropriate follow up call for comments from them.
- Consider any comments received.

Step 6

Decision Aiding Documents

Prepare the following documents for relevant subcommittee:

- A submission introducing the application and recommending whether or not to revoke the licence;
- Draft decision/letter informing the applicant of the Energy Regulator's decision *(NB: If the final decision is not to revoke the licence, the letter must include a sentence advising the applicant of their right to apply for judicial review of the decision in terms of section 10(3) of the National Energy Regulator Act, 2004); and*
- Draft reasons for decision

Step 7

Decision implementation

(Within 14 days after the date of the decision)

- Implement Energy Regulator's decision by issuing the following:
 - Letter informing the applicant of the Energy Regulator's decision; and
 - Reasons for decision.
- Post the approved Reasons for Decision on NERSA's website

5. REVIEW OF THIS PROCEDURE

This procedure shall be reviewed annually or at any time as the Piped Gas Sub-Committee may deem necessary.

6. APPLICATION

The procedures shall apply to all applications for revocation of licenses in terms of section 25(1) of the Gas Act.

7. RESPONSIBILITY

All GLC personnel that process applications for revocation of applications in terms of section 25 of the Gas Act, 2001 (Act No. 48 of 2001) are required to comply with the processes outlined in this procedure manual.

The Head of Department: GLC is responsible for management of the implementation of this procedure.

**TABLE 1: CHECKLIST FOR THE PROCESSING OF LICENCE REVOCATION APPLICATION
Particulars of the Licensee**

Name of Licensee:	
Licence Number:	
Type of licence:	
Date of issue of licence:	
Details of the licensed facility/ activity:	
Details of the mandated representative of the applicant including: <ul style="list-style-type: none"> a. Designation, b. Family Name, c. First Name, d. Telephone number, e. Fax number, and f. Email address 	

Checklist question	Response (Yes/No)	
1. Has receipt of the application been acknowledged within 7 working days?	Y	N
2. Has the licence revocation application been assigned to the Application Processor within 3 working days?	Y	N
3. Does the lodged application include request for confidential treatment of information?	Y	N
3.1 If yes, use Annexure A		
3.2 Was the request for confidential treatment processed within 30 days?	Y	N
4. Has the adequacy report been produced within 14 days?	Y	N
4.1 Was the application submitted in a prescribed form and manner, and was it complete?	Y	N
4.1.1 If no, was the applicant informed of the incomplete application?	Y	N
4.1.2 If yes, was the applicant informed of the completeness and official date of the application?	Y	N

5. Has the Energy Regulator invited public comments in terms of the relevant provisions of the Promotion of Administrative Action Act?	Y	N
6. Were the comments received from the public?	Y	N
6.1 Has the analysis of the comments been done?	Y	N
7. Was the public hearing advertised within at least 7 days prior to the date of the hearing?	Y	N
7.1 Was the Aide Memoire prepared prior to advertising the public hearing?	Y	N
7.2 Was the applicant and any persons likely to be affected invited to the public hearing?	Y	N
8. Were the decision documents compiled within 14 days of the public hearing?		
8.1 Were they submitted to the relevant subcommittee for the decision/approval within 60 days from the last date of the publication of the notice for comments or (if comments were received), then from the last date of receipt of comments?	Y	N
9. Was the Energy Regulator's decision implemented within 14 days after approval?	Y	N
10. Were all the documents scanned and archived?	Y	N

Duly completed and signed by:

NAME : _____

DESIGNATION : _____

DEPARTMENT : _____

DATE : _____

SIGNATURE : _____

Annexure:

Annexure A: Example of Table of Recommendations for Confidentiality Requests.

Annexure B: Example of Format for Reasons for Decision

Annexure C: Example of Invitation for Public Comments Format

ANNEXURE A

FORMAT FOR TABLE OF RECOMMENDATIONS FOR CONFIDENTIALITY REQUESTS

**XYZ (PTY) (LTD)'S APPLICATION FOR CONFIDENTIAL TREATMENT OF INFORMATION IN
AN APPLICATION FOR REVOCATION OF A LICENCE IN TERMS OF SECTION 25 OF THE
GAS ACT, 2001 (ACT NO 48 OF 2001)**

**1. (INDICATE THE NATURE AND REFERENCE NUMBER OF THE APPLICATION TO BE
REVOKED)**

Application	Item	Reference in Licence Application	Gigajoule Africa Reasons	Staff Recommendations	
<i>Indicate the type of application made</i>	<i>Specify the item on which confidentiality is requested.</i>	<i>Indicate the reference of this item in the application documents.</i>	<i>Summarise reasons provided by applicant for this item</i>	<i>Recommend whether the information should be kept confidential or not</i>	<i>Pro sup Pro 200 prev Reg app</i>

By
(Applicant Name)

In
(area)

Application No: **(Application Reference)**

B. The decision

State the decision and the date on which it was made.

C. The RFD Headings:

Reasons for Decision

The Application

Discuss issues about the application, including when the application was received, compliance with the Rules for Application specifically regarding public viewing requirements, and whether there were any objections received.

The Applicant(s)

Discuss the applicants, covering amongst other their legal status and shareholding etc.

Applicable Law

Specify the applicable laws including NERSA's mandate on the matter under consideration by quoting the applicable sections and their relevance to the application.

Objectors and Intervening Parties

Discuss the objections received: who submitted the objections, summary of the objections, summary of the applicant's response to the objections, and NERSA's view on the objections (Legal analysis).

Request for Confidential Treatment of Information (if any request is made)

Summarise the applicant's request for confidentiality and NERSA's decision on such request.

Details of the Application

Give an overview of the application, providing amongst others the details of the licence sought to be revoked, the reasons for the proposed revocation and the implications (if any) that the revocation may have on other parties.

Public Hearing

Discuss details of public hearing, summary of representations made at the hearing, NERSA's position on key issues raised at the public hearing.

Analysis of Application

List and discuss the key issues about the application and NERSA's position on those issues.

Conclusion

Provide your conclusion on amongst others the adequacy of the application, the abilities of the applicant, and the status of the facility, and NERSA's decision to grant or not to grant licence.

**INVITATION FOR PUBLIC COMMENTS ON SASOL GAS LIMITED'S APPLICATION FOR
REVOCATION OF LICENCE IN TERMS OF SECTION 25 OF THE GAS ACT, 2001**

The National Energy Regulator (NERSA) is a regulatory authority established as a juristic person in terms of section 3 of the National Energy Regulator Act, 2004 (Act No. 40 of 2004). NERSA's mandate is to regulate the electricity, piped-gas and petroleum pipelines industries in terms of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), Gas Act, 2001 (Act No. 48 of 2001) and Petroleum Pipelines Act, 2003 (Act No. 60 of 2003).

Members of the public and stakeholders are hereby notified that NERSA has received an application for revocation of the following licence:

LICENCE NUMBER	APPLICANT AND LICENSEE	LICENCE DESCRIPTION
Gala.t.F1		

This licence was granted by NERSA to the applicant (Name) on (date) for the (type of licence and area/ location) to (purpose of the licence).

("The reason for the revocation application as per the application")

Section 25(1)(a) of the Gas Act, 2001 allows a licensee to apply for revocation of its licence, and NERSA to grant such application, if the licensed facility or activity to which the licence concerned relates is no longer required. In terms of section 10(1)(d) of the National Energy Regulator Act 2004, however, every decision of NERSA must be taken within a procedurally fair process in which affected persons are given the opportunity to submit their views and present relevant facts and evidence to NERSA.

In order to enable NERSA to make an informed decision on this licence revocation application, members of the public and stakeholders are hereby invited to submit their written comments in connection with the proposed licence revocation to The Executive Manager: Piped Gas, Kulawula House, 526 Vermeulen Street, ARCADIA, 0083; tel. (012) 401 4028, fax no. (012) 401 4700 or email at pipedgas@nersa.org.za. This invitation for public comments is being made in terms of regulation 18(2)(a) of the Regulations on Fair Administrative Procedures published in Government Notice No.R1022 of 31 July 2002 (Government Gazette No. 23674),

The closing date for receipt of public comments is (Date and time), and all comments received after the closing date will be disregarded.

All other enquiries may be directed to HOD, GLC or Application Processor (Name) at:

Telephone number : 012 – 401 4711 or 4009
Email : pipedgas@nersa.org.za

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