

## **GUIDELINES TO STREAMLINE APPLICATIONS FOR CONFIDENTIALITY REQUEST**

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### **1. PURPOSE**

The purpose of these Guidelines is to enhance the efficiency in the decision making process of requests for the confidential treatment of certain information. The Guidelines will assist NERSA in handling requests for confidential treatment of information by persons submitting such information to the Energy Regulator and will also ensure consistency in the decisions made by the Energy Regulator.

### **2. LEGISLATIVE REQUIREMENTS**

#### **The Gas Act, 2001 (Act No. 48 of 2001)**

- 2.1 In terms of section 16(3) of the Gas Act, 2001 (Act No. 48 of 2001) (“the Gas Act”) licensees may request confidential treatment of information of commercially sensitive information contained in an application and, subject to the concurrence by the Energy Regulator, such information may be withheld from publicly available copies of the application.
- 2.2 Furthermore, section 29 (4) of the Gas Act provides that, “*No information obtained by the Gas Regulator in terms of this Act which is non-generic, confidential, personal, commercially sensitive or of a proprietary nature may be made public or otherwise disclosed to any person without permission of the person to whom that information relates, except in terms of an order of the High Court.*”

## **Rules made in terms of the Gas Act**

2.3 According to rule 4 of the Rules made in terms of the Gas Act ('the Rules'), all requests for confidential treatment of information submitted to the Energy Regulator must be made in accordance with this rule and in the prescribed form. The rule and the form direct requesters to base their requests on the provisions of the Act and PAIA.

2.4 When the Energy Regulator decides on the confidentiality of information it should be guided by the relevant legislation. Section 36(1) of PAIA provides that:

*“Subject to subsec Subject to subsection (2), the information officer of a public body must refuse a request for access to a record of a body if the record contains-*

- a) trade secrets of a third party;*
- b) financial, commercial, scientific or technical information , other than trade secrets of a third party, the disclosure of which would be likely to cause harm to the commercial or financial interest of that third party; or*
- c) information supplied in confidence by a third party the disclosure of which could reasonably be expected-*
  - (i) to put that third party at a disadvantage in contractual or other negotiations; or*
  - (ii) to prejudice that third party in commercial competition.”*

2.5 As provided in paragraph 2.3 above, applications for confidential treatment of certain information by the licensee must be made in writing in the form specifically designed for confidential treatment of information in accordance with Rule 4 (2) (a) of the Piped Gas Rules providing all information specified

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therein. The applications are approved by the Energy Regulator as appropriate.

### **3. SCOPE AND COVERAGE OF THE GUIDELINES**

3.1 These guidelines cover submissions for requests for confidential treatment of information. Submissions for confidential treatment of information to the Energy Regulator can be made in the following instances:

- a. When the following applications are lodged:
  - I. Maximum price applications;
  - II. Transmission and storage tariff applications;
  - III. Licence (including objection & responses to objections);
  - IV. Amendment to a licence; or
  - V. Revocation of a licence.
- b. When information is submitted in compliance with:
  - I. The Gas Act and Regulations made in terms of the Act (the Regulations);
  - II. Licence conditions; or
  - III. A request by the Energy Regulator.
- c. When responding to the Energy Regulators call for public comments or making representations to the Energy Regulator at public hearings; and
- d. May also be made in any other instance not specifically mentioned in this document.

### **4. INFORMATION TO BE SUBMITTED BY LICENSEES**

4.1 All requests for confidential treatment of information on licence, maximum price, trading margin and transmission tariff applications by the licensee must be made in writing in the form specifically designed for confidential

treatment of information in accordance with Rule 4 (2) (a) of the Piped Gas Rules providing all information specified therein.

### **Information to be submitted**

4.2 The following information must be submitted to NERSA as part of an application for confidential treatment of information:

- a. Confidential request form – containing a request by the applicant for some of the information in the application to be treated as confidential;
- b. A confidential copy of the application of maximum price, trading margin and tariffs; and
- c. A non-confidential copy of the application of maximum price, trading margin and tariffs which will be published on the NERSA website for public comments.
- d. When a request for confidential treatment is made in any other manner, the requester must be informed of the rules and be provided with the necessary form.

4.3 Once the Energy Regulator approves the request, the applicant will be notified.

## **5. OBJECTIONS – REQUEST FOR CONFIDENTIALITY**

5.1 Requests for confidential treatment of information in objections must be handled in accordance with step 4 of these guidelines.

## **6. PUBLIC HEARING – REQUEST FOR CONFIDENTIALITY**

6.1 At the hearing the chairperson will:

- a. Clearly outline the process followed to date;
- b. Outline the process to be followed at the hearing and state whether parts of the presentation that the Energy Regulator has agreed to be confidential will be presented to the panel during a closed session (closed to the public) and members of the public will be requested to vacate the venue during the time. Members of the panel may also

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question the presenter on the confidential information during the closed session; and

- c. Indicate when the closed session will take place i.e. at the beginning, during or the end of the hearing.

## **7. COMPLAINTS AND INVESTIGATIONS**

- 7.1 Any information received by the Energy Regulator during its investigation of the complaint is treated as confidential until NERSA takes a decision in respect to that information.

The table below provides a summary of the information that may be treated as confidential.

## LIST OF CONFIDENTIAL INFORMATION

No	LIST OF REQUEST FOR CONFIDENTIAL TRATMENT OF INFORMATION	NERSA treatment of confidential information. (Yes/No)	
		State owned Entities	Privates companies
<b>A</b>	<b>COMPONENTS OF ALLOWABLE REVENUE</b>		
1	Identity number/Passport number of mandated representatives	Y	Y
2	Names of customers	Y	Y
3	Customer contracts	Y	Y
4	Marketing strategy and other commercial sensitive information	Y	Y
5	Trading regulatory asset base (TRAB)	N/Y	Y
6	Working capital	N/Y	Y
7	Cost of Sale	N/Y	N
8	Weighted Average Cost of Capital (WACC)	N/Y	Y
9	Market risk premium (MRP)	N	N
10	Risk Free rate (Rf)	N	N
11	Beta	Y	Y
12	Cost of Equity (Ke)	N/Y	Y
13	Cost of debt (Kd)	N/Y	Y
14	Consumer price Inflation (CPI)	N	N
15	Operating expenses including depreciation	N/Y	Y
16	Tax rate	N	N
17	Taxation	N/Y	Y
18	Gas Volumes	N/Y	Y
19	Company specific commercial sensitive information	Y	Y
<b>B</b>	<b>REGULATORY FINANCIAL REPORTS (RFR)</b>		
1	Operating expenses	Y	Y
2	Assets and liabilities	Y	Y
3	Company specific commercial sensitive information	Y	Y
4	Detailed financial statements not to be published	Y	Y
<b>C</b>	<b>OTHER INFORMATION WHICH MAY BE COMMERCIAL SENSITIVE</b>		
1	Variance between NERSA calculated Licensee calculation	N	N

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No	LIST OF REQUEST FOR CONFIDENTIAL TRATMENT OF INFORMATION	NERSA treatment of confidential information. (Yes/No)	
		State owned Entities	Privates companies
2	References to external studies but using company specific data	N	N
3	Content of external studies referencing to company specific data	Y	Y
5	Shareholding percentage	N	N
6	Detailed financial statements	Y	Y
7	Company specific commercial sensitive information	Y	Y

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