

MINISTRY OF MINES AND ENERGY**The Draft Gas Bill**

The Draft Gas Bill is hereby up for additional comment.

Comments should be submitted in writing to:

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Written comments must be received no later than 27 July 2001.

REPUBLIC OF NAMIBIA**GAS ACT 2001****DRAFT No.2 b (29 June 2001)**

To promote the establishment of a gas transportation and distribution network in Namibia for the purposes of domestic supply and for export; to establish a framework of licensing for the gas industry and a national gas regulator to monitor the performance of licence conditions and promote reliability of service; to ensure safety, efficiency and environmental responsibility in the transportation and distribution of natural gas; to facilitate investment in pipeline infrastructure by private, public, municipal and mixed owned enterprises; to promote a competitive market in gas in the long term, and to stimulate cross-border trade in gas between Namibia and its neighbours.

DRAFT No.2.....	1
PART I: GENERAL	4
PART I: GENERAL	4
1. Definitions.....	4
2. Scope	5
PART II: ESTABLISHMENT OF THE AUTHORITY	6
3. Establishment of a Gas Regulatory Authority	6
4. Composition of the Authority	6
5. Appointments.....	6
6. Staffing.....	7
7. Removal of Chairman and members.....	7
8. Funding.....	8
9. Accounting.....	8
10. Auditing	8
11. Reporting requirements.....	9
PART III: POWERS AND FUNCTIONS OF THE AUTHORITY.....	10
12. Independence of the Authority.....	10
13. Functions of the Authority	10
14. Power to obtain information and documents	11
15. Disclosure of information	12
16. Powers of entry and inspection of premises and equipment	12
17. Competition issues	13
PART IV: GOVERNMENT POWERS AND FUNCTIONS.....	13
18. Administration of the gas sector	13
19. Requirement to be licensed.....	13
20. Regulations.....	14
PART V: GENERAL RULES RELATING TO THE LICENSING REGIME	14
21. Duty to obtain a licence	14
22. Main criteria for granting a licence.....	15
23. Conditions of a licence.....	16
24. Application for a licence.....	16
25. Application and licence fees.....	16
26. Transfers, modifications and revocation of licences.....	16
27. Access to land	18
PART VI: TRANSPORTATION AND STORAGE	18
28. Transportation	18
29. Storage	19
PART VII: DISTRIBUTION AND MARKETING.....	19
30. Distribution within geographical zones	19
PART VIII: GAS EXPORT AND TRADE	20
31. Licensing requirement.....	20
32. Bilateral agreements.....	20
PART IX: PRICING.....	20
33. Establishment of prices	20
PART X: OPERATIONAL REQUIREMENTS	21

35.	Service obligations.....	22
36.	Standards of quality	22
	PART XI: USE OF LAND AND ENVIRONMENTAL ASPECTS.....	22
37.	Expropriation	22
38.	Environmental aspects	23
	PART XII: MISCELLANEOUS	24
39.	Infringement and sanctions	24
40.	Right of appeal.....	25
41.	Transitional provisions.....	25
42.	Amendment or repeal of laws and savings	25
43.	Short title and commencement.....	25

PART I: GENERAL

1. Definitions

For the purposes of this Act the following definitions apply herein:

“Authority” means the Gas Regulatory Authority established under this Act;

"customer" means a person purchasing gas, or purchasing transportation, storage or distribution services;

“distribution” means the activity of receiving, treating and delivering gas through an interconnected system of gas pipelines and associated equipment which has an operating pressure of more than 1 bars and a maximum operating pressure under normal conditions not exceeding 15 bars or such figure(s) that the Authority may specify from time to time in the *Gazette* or by a directive, is controlled and operated as a single integrated system, and which is designed and operated solely to provide a supply of gas to customers through pipelines in a geographic zone;

“eligible customers” means a consumer above a certain threshold defined by the Minister in subordinate legislation who purchases gas directly from suppliers without the intervention of a distribution company;

“environment” means the complex of natural and anthropogenic factors and elements that are mutually interrelated and affect the ecological equilibrium and the quality of life; and the environment includes:

- a. The natural environment being land, water and air, all organic and inorganic material and all living organisms, and
- b. The human environment being the landscape and natural, cultural, historical, aesthetic, economic and social heritage and values;

“Environmental Assessment” means a process of identifying, predicting and evaluating the actual and potential biophysical, social and other relevant effects on the environment of projects prior to their authorisation, or in the case of proposals prior to their implementation, as well as the risks and consequences of projects and proposals and their alternatives and options for mitigation with a view to minimising negative impacts on the environment, maximising benefits and promoting compliance with the principles of environmental management set out in the Environmental Management Act 1998;

“licence” means a grant of rights to transport, store, distribute and/or market gas made by the Minister of Mines and Energy, on the recommendation of the Authority;

“licensee” means the holder of a licence;

“Minister” means the Minister responsible for energy affairs, presently the Minister of Mines and Energy, unless otherwise indicated in the text;

“marketing” is an activity carried on by persons who purchase and sell gas, subject to an industry Code of Practice and penalties fixed by regulations, and who may or may not carry out transportation and distribution functions inside or outside the zone in which they are established;

“gas” means all hydrocarbon gasses transported by pipeline, including but not limited to natural gas, artificial gas, hydrogen rich gas, methane rich gas, synthetic gas, coal bed methane gas, liquefied natural gas, compressed natural gas, re-gasified liquid natural gas or any combination thereof;

“pollution” means the direct or indirect introduction, as a result of human activity, of substances, vibrations, heat, radiation or noise into the air, water or land which may be harmful to human health or well-being or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment;

“storage” means the activity of receiving, holding and delivering gas at fixed facilities other than pipelines;

“supply” means the sale or commercial provision of gas to any electricity generator, industrial or commercial concern, household or other gas user, for consumption by that user;

“system” means the set of pipes, compressors, regulators, meters, facilities and ancillary equipment for transportation, treatment, storage and distribution of gas;

“transportation” means the activity of receiving, treating and delivering gas through an interconnected system of gas pipelines and associated equipment, which has a normal operating pressure exceeding 15 bars or such figure(s) as the Authority shall specify in the *Gazette* or by Directive from time to time, to those that are not final users. It also includes the activity of treating the gas to meet the agreed specifications before it is delivered to the distributor;

“treatment” means the processes such as hydrocarbon and water dew pointing, odourisation and compression that are required to achieve the specifications necessary to make gas marketable in its quality.

2. Scope

This Act applies to the activities of transportation, storage, distribution and marketing of gas. It does not apply to the activities of exploration for or production of natural gas, already covered by the Petroleum (Exploration and Production) Act 1991, as amended.

PART II: ESTABLISHMENT OF THE AUTHORITY

3. Establishment of a Gas Regulatory Authority

- (1) A body with the name of Gas Regulatory Authority (hereinafter `Authority') shall be established. This body shall be a juristic person.
- (2) The Authority shall exercise control over the transportation, storage, distribution and marketing of gas in accordance with the prevailing Government policy so as to facilitate the early and rapid development of this new industry and to ensure its safe and reliable operation.
- (3) The Authority shall be established at such time as decreed by the Minister. During the interim period the Minister shall carry out the functions of the Authority as stated in this Act, including provisions on auditing, publication of annual reports and the meetings conducted by the Authority.

4. Composition of the Authority

- (1) The Authority shall consist in not less than three and no more than five part-time members, to be appointed by the Minister.
- (2) One of the members shall be appointed as Chairman by the Minister. The members shall meet as a group at such times as may be determined by the Chairman and as required for the proper performance of their functions. They shall decide matters on a majority vote, the Chairman being entitled to cast the deciding vote. The decisions of the Authority shall be recorded.
- (3) All meetings of the Authority shall be open to the public unless confidential, proprietary or commercially sensitive information is tabled for discussion, and which materially affects the rights of any person. In such cases, the affected person must indicate to the satisfaction of the Authority, why such a meeting should not be held in public.
- (4) All resolutions of the Authority are to be made public, except those meetings not open to the public.

5. Appointments

- (1) Members shall be appointed on a staggered basis for a period of three years, which may be renewed. Members may be removed from office only if evidence is provided of physical or mental incapacity while performing the duties of a

member or if he is otherwise unable or unfit to discharge the functions of a member of the board.

- (2) Such members are to be citizens of Namibia, possess demonstrable excellence in professional or academic matters related to the regulated activities, and have no conflict of interest or relationship with parties involved in regulated activities. As a temporary measure a minority of the members might not be Namibians as the Minister deem necessary.
- (3) Members shall refrain from any other employment, work or commission, which may interfere with their official duties.
- (4) The Authority shall have the following powers:
 - a. to co-ordinate the work of the Authority;
 - b. to implement, execute and oversee the application of internal policies;
 - c. to act as legal representative of the Authority and to delegate such powers;
 - d. to present the Authority's regulations for approval by the Authority;
 - e. to propose the nomination of an Executive Secretary to the Authority;
 - f. to appoint and remove the Authority's personnel, except the personal staff of other members, who shall be appointed and removed by such members;
 - g. to prepare an annual proposed budget, which shall be approved by the Authority;
 - h. to publish an annual report on the performance of the Authority, and
 - i. all other powers conferred by laws and regulations.

6. Staffing

The work of the Authority will be supported by a small secretariat. All details of the operation, functions, staffing and terms of remuneration, the criteria for selection of members as well as the resources of the Authority and other matters will be provided for in Regulations, proposed by the Minister. The secretariat shall be headed by an Executive Secretary who shall be appointed by the Authority by a unanimous vote.

7. Removal of Chairman and members

- (1) A person shall cease to be Chairman or other member if he or she:
 - a. at any time after appointment attracts any of the provisions of subsection (2);
 - b. becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt debtors or compounds with his or her creditors or makes an assignment of his or her property for their benefit or a deed of arrangement under any law relating to bankruptcy.

- (2) The Minister may remove from office the Chairman or any other member after making an inquiry with an independent committee, if the report of the inquiry finds that he or she becomes permanently incapable of performing his or her duties or subject to any of the disqualifications specified in regulations or in this Act or has done any act that constitutes gross misconduct.
- (3) The Chairman or any other member of the Authority may at any time resign by written notice signed and addressed to the Minister.

8. Funding

The remuneration and other allowances payable to the members and Chairman of the Authority, and the administrative expenses, including salaries, allowances and pensions payable to the staff of the Authority, are to be determined by the Minister of Finance. The remuneration and allowances payable to members of the Authority and all expenses incidental to the performance of the functions of the Authority shall be met from funds in the form of application and licensing fees and such other levies as may be applied under the provisions of this Act.

9. Accounting

- (1) The Authority shall keep such accounting records as are necessary to present the state of its affairs and functions and to explain its transactions and its financial position.
- (2) The Chairman is the accounting officer of the Authority and shall cause proper record to be kept of all financial transactions, assets and liabilities of the Authority and report regularly on this to the Authority.

10. Auditing

- (1) The Minister shall appoint on a five-yearly basis a firm of auditors of which the partners are engaged in public practice as defined in section 1 of the Public Accountants and Auditors Act, 1951 (Act No 51 of 1951) (hereinafter referred to as the auditors) to examine the financial statements of the Authority.
- (2) The Authority shall produce and submit to the auditors all its accounting records with all vouchers in support thereof, and all books and documents in its possession or control relating thereto.
- (3) For the purposes of the audit, any such auditor may hear and receive evidence upon oath or affirmation (which oath or affirmation he is hereby empowered to administer), and may by summons under his hand require such persons as he may

think fit, to appear personally before him at a time or place to be stated in the summons and to produce all such books and papers as may be necessary for such audit.

- (4) Any person so required who, without lawful excuse, fails to attend in accordance with such summons or who, having appeared, refuses to be examined on oath or affirmation or to take such oath or affirmation or, having taken such oath or affirmation, to answer such questions as may be put to him, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or to a period of imprisonment not exceeding 12 months or to both such fine and such imprisonment.
- (5) The auditors shall:
 - a. disallow every unauthorized payment made and surcharge it against the person who made or authorized such payment;
 - b. surcharge against any person responsible therefore the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but has not been brought into account by that person; and
 - c. in every case certify the amount due by such person.
- (6) Every amount so certified by the auditors shall be paid by such person within 14 days after the said amount has been so certified to the officer appointed by the Authority and may, if not so paid, be recovered from such person as a debt by the auditors, who shall be paid by the Authority their reasonable costs and expenses incurred in such proceedings.
- (7) The auditors shall certify at least once a year whether or not:
 - a. they have examined the financial statements of the Authority;
 - b. the financial statements fairly represent the financial position of the Authority and the results of its functions in the manner required by this Act;
 - c. the value of the assets and liabilities of the Authority has been correctly stated; and
 - d. all their requirements and recommendations as auditors have been complied with and carried out.
- (8) The auditors shall once a year audit all books and accounts of the Authority relating to transactions, which in terms of any law may not be disclosed.

11. Reporting requirements

- (1) The Authority shall submit a report to the Minister annually. This document shall be based upon such information as is required to be submitted by the licensees.

- (2) The annual report shall include the following:
 - a. an audited balance sheet, including any notes thereon or document annexed thereto providing information required by this Act;
 - b. an audited income statement, including any similar financial statement where such form is appropriate and including any notes thereon or document annexed thereto providing information required by this Act;
 - c. an audited statement of the source and application of the funds, and
 - d. the report of the auditors.

- (3) The financial statements referred to in subsection (2) (a), (b) and (c) shall:
 - a. be in accordance with the applicable requirements in respect of the annual financial statements of companies prescribed by the Companies Act 1973 (Act No 61 of 1973);
 - b. be in conformity with generally accepted accounting practice;
 - c. fairly present the state of affairs and functions of the Authority and the results thereof; and
 - d. refer to any material matters not specifically prescribed by this Act which have affected or are likely to affect the affairs of the Authority, both by way of figures and by descriptive report, amplifying and explaining where necessary figures in financial statements.

- (4) An annual report as prescribed in subsection (1) above shall be printed in both official languages.

- (5) As soon as is practicable after a report has been submitted to the Minister in terms of subsection (1), he shall table it in Parliament.

PART III: POWERS AND FUNCTIONS OF THE AUTHORITY

12. Independence of the Authority

The Authority shall be independent in the exercise of its powers under this Act and shall act in ways consistent with Government gas policy.

13. Functions of the Authority

- (1) The Authority shall make recommendations to the Minister to:
 - a. grant licences for gas transportation, storage, distribution and marketing;
 - b. monitor and approve of gas transportation, storage, and distribution tariffs and charges and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner; and

- c. approve tariffs and charges to gas distributors and customers who do not have choice of suppliers, having regard to both the interests of customers and the needs of licensees.

(2) The Authority shall:

- a. assist the Minister in the preparation of gas supply regulations, review as requested rules on safety and such technical matters as are included in the regulations and supervise the implementation of all of the provisions and especially those relating to the safety of consumers, employees and others;
- b. monitor the operation of the gas system and report on the supply of gas by the licensees to the Minister annually and when requested by him in writing;
- c. issue directions to the licensees to ensure compliance with licence conditions. Failure to comply with directions shall result in imposition of fines in amounts specified in the regulations;
- d. settle disputes between licensees and between licensees and customers at the request of a licensee or any interested party on matters concerning:
 - i. the right to supply or be supplied;
 - ii. the quality of such supply and the provision of services in connection with this;
 - iii. the installation and functioning of meters;
 - iv. the suitability of the equipment of the licensee;
 - v. delays in or refusal by a licensee to supply its customers; and
 - vi. any other matter directly related to a regulated activity in respect of which a licensee or its customers requests the Authority to act as mediator;
- e. perform inspections of the premises and equipment of licensees; and
- f. advise the Minister on any matter relating to the gas supply industry and for this purpose the Authority may carry out such investigations as it or the Minister may deem necessary.

14. Power to obtain information and documents

- (1) The Authority may require that a licensee or any other person provide any information to it that may be reasonably necessary for the Authority to carry out its functions under this Act. Such information may include any document plan, electronic file, record or other material.
- (2) Any requirement for information shall be made in a written notice that identifies such information or document and which also specifies the date by which compliance must be made, and the form in which the information or document shall be given to the Authority.
- (3) Failure to comply with this requirement without lawful excuse is an offence and will result in a criminal penalty being applied.

15. Disclosure of information

- (1) Members of the Authority or its employees, who are acquainted with confidential information through their service, are obliged to keep them in secrecy. The Members shall have the right to disclose this information only with the consent of the interested parties.
- (2) A member of the Authority shall not participate in deliberations or vote on any matter which is the subject of consideration at a meeting if in relation to such matter, such member has any interest, either direct or indirect, which precludes such member from performing the functions of a member in a fair, unbiased and proper manner.
- (3) Any member of the Authority who contravenes subsection (2) shall be guilty of an offence and be liable upon conviction to a fine stipulated in regulations made by the Minister or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (4) The Authority shall publish information, advice or recommendations necessary for keeping the companies fully informed with regard to the transportation, storage, distribution and marketing of gas giving due regard to confidentiality.

16. Powers of entry and inspection of premises and equipment

- (1) The Authority, an Inspector or any person authorised in writing by the Authority, may:
 - a. at all reasonable times enter upon the premises of any licensee and inspect machinery, books, accounts and other documents found therein and which are relevant to the licenced activity; and
 - b. call upon any licensee to furnish to the Authority or the Inspector such periodical or other returns in such form as the Authority or the Inspector may prescribe and such further particulars in respect of the undertaking as the Authority or the Inspector may require.
- (2) Any person authorised to do so in writing by a licensee may at all reasonable times enter onto premises to which gas is or has been supplied by that licensee, in order to inspect the lines, meters, fittings, works and apparatus belonging to such licensee, or for the purpose of ascertaining the quantity of gas consumed, or where a supply is no longer required or where such licensee may cut off the supply for the purpose of removing any pipes, meters, fittings, works and apparatus belonging to such licensee. Damage caused by such entry, inspection or removal shall be repaired or compensated for by the licensee.

- (3) Any person wishing to enter any premises in terms of the provisions of subsection (2) shall:
 - a. if possible, first make the necessary arrangements with the legal owner or occupant of the premises before entering such premises and shall adhere to all reasonable security measures, if any, of such owner or occupant; and
 - b. exhibit this authorisation to do so at the request of any person materially affected by his activities.

17. Competition issues

- (1) The Authority shall monitor the development of the market in such a way as to note instances of unfair competition and abuse of a dominant market position by licensee companies.
- (2) Any such instances of unfair competition or abuse shall be notified to the Competition Authority, established under the Competition Act, which is empowered to take action under its existing powers even if it has not been notified by the Authority established under this Act.

PART IV: GOVERNMENT POWERS AND FUNCTIONS

18. Administration of the gas sector

During the initial phase of establishment of a gas industry in Namibia, the Minister shall endeavour to facilitate the co-ordination of tasks involving other government bodies and will be responsible for the establishment and initial operation of the Authority.

19. Requirement to be licensed

- (1) No activity in connection with the transportation, storage or distribution and marketing of gas may be carried out by any person other than a company authorised to do so by the Minister under the licensing regime set out in this Act.
- (2) A licence is also required in cases of supply to be used for national security purposes. The granting of such licences is to be given a priority over all other applications pending for the area concerned.
- (3) The Minister shall have the power to order any unlicensed person to cease operating and to disconnect its apparatus.

20. Regulations

- (1) The Minister has the power to introduce regulations into Parliament for the transportation, storage, distribution and marketing of gas. The first such regulations should be prepared and issued by and at such time as decreed by the Minister. Such regulations may include provisions on the following:
 - a. third party access;
 - b. maintenance of service pipes;
 - c. metering;
 - d. installation of meters in new premises;
 - e. recovery of gas charges for the supply of gas;
 - f. damage to gas fittings relevant to the gas and interference with the meters;
 - g. restoration of supply without the consent of the supplier;
 - h. failure to notify connection or disconnection of service pipes;
 - i. prevention of gas escapes;
 - j. information on cases of gas escapes;
 - k. powers of entry for purposes of inspection, including entry into premises during continuance and on discontinuance of supply;
 - l. powers of entry for replacing, repairing or altering pipes;
 - m. health and safety provisions, such as provisions governing the protection of the public from injury, fire, explosions and other dangers arising from the transportation;
 - n. the distribution or the use of gas supplied through pipes;
 - o. levies relating to the financing of the activities of the Authority;
 - p. provision for environmental matters;
 - q. transportation and distribution prices; and
 - r. requirements for an initial license or transfer of a license, revocation of a license, and conditions on licenses.
- (2) Such regulations shall only be introduced after a process of consultation has taken place with all the interested parties before preparing or modifying such regulations.
- (3) All such regulations are to be published in the *Gazette*.

PART V: GENERAL RULES RELATING TO THE LICENSING REGIME

21. Duty to obtain a licence

- (1) The activities of:
 - a. transportation;
 - b. storage;
 - c. distribution; and

- d. marketing
are subject to a licence being granted by the Minister following a recommendation by the Authority.
- (2) If a licensee wishes to transfer his licence, the new owner must obtain a new licence or approval for such transfer from the Minister after recommendation by the Authority in the manner prescribed by the regulations.
- (3) The partial or total transfer of rights covered by a licence is subject to prior approval by the Minister and the Minister may, after recommendation by the Authority, to the extent that it may be necessary, subject applications for such transfer of rights to the procedures set out in Part VI of this Act.

22. Main criteria for granting a licence

- (1) In considering an application for the granting, renewal, amendment or transfer of a licence, the Minister, after a recommendation by the Authority, shall give due consideration to matters or activities that may adversely affect, constitute a hindrance or may result in damage to the environment or the rights of others; weighed against the advantages in general that may be derived from the granting, renewal, amendment or transfer of any licence in terms of the provisions of this Act.
- (2) The Minister shall:
- a. request from the applicant or licensee, an environmental impact assessment study indicating the extent of any damage to or pollution of the environment and of the steps to be taken by the applicant or licensee to adequately protect or restore the environment generally and in terms of the Environmental Management Act 1998; and
 - b. request the applicant or licensee to submit details of the technical, financial and other economic resources of, or available to, the applicant or licensee to execute the work, to operate the pipeline network and to carry on the business to which the application or licence relates, substantiated by documentary proof where applicable.
- (3) The Minister may, on the recommendation of the Authority:
- a. take into consideration whether the activities of the applicant or licensee will not be detrimental to or adversely affect the rights and operation of other licensees or their customers in their area of operation; and
 - b. refuse to grant, renew, amend or transfer a licence in respect of an area larger than an area, or a right in excess of a right which, in the opinion of the Minister, the applicant or licensee will be capable of providing an effective and efficient service to the customer.

23. Conditions of a licence

- (1) Subject to the provisions of this Act the Minister after recommendation by the Authority, is entitled to attach conditions to any licence and to make a licence subject to the fulfilment of those conditions.
- (2) In the interest of providing potential applicants with an indication of the principal conditions to be included in such licences, the Minister shall issue model licences.

24. Application for a licence

- (1) An application for the granting, renewal, amendment or transfer of a licence must be submitted to the Authority in the form and manner prescribed by Regulations and contains the information required by such Regulations.
- (2) Each application in connection with a licence must be duly publicised giving due regard to confidentiality in the manner prescribed by the Regulations.
- (3) An application for the granting, renewal, amendment or transfer of a licence shall be dealt with by the Minister after the recommendation by the Authority in the manner prescribed by Regulations.
- (4) The Authority shall on receipt of an application in connection with a licence decide within 30 days whether or not the application complies with the rules. When an application is approved for publication the Authority shall take appropriate steps so as to ensure that a final decision on the application is being taken without undue delay as from the date of application.
- (5) When a licence is granted by the Minister after a recommendation by the Authority in circumstances where work had to be done the licensee must commence with the work and the establishment of within the time-limit stipulated in the licence. This is subject to the proviso that the Authority may grant an extension of time on good cause being shown.

25. Application and licence fees

An applicant and licensee shall pay to the Authority the application and licensing fees prescribed by the Minister in the Regulations in respect of the applications to be considered and licences to be issued, transferred or amended in terms of the provisions of this Act.

26. Transfers, modifications and revocation of licences

- (1) The transfer of a licence shall require the prior approval of the Authority, upon application submitted by the interested parties wherein the proposed licensee provides evidence of compliance with the requirements for being a licence holder, and a commitment to fulfil the obligations established in the licence and in the general conditions for the provision of service.
- (2) A copy of the authorisation shall be delivered to the competition authorities.
- (3) When applicants fail to comply with the requirements for a transfer or when the information submitted is deemed to be insufficient, the Authority shall notify the applicants who shall correct the deficiencies within one month, or the application shall be rejected. Once the requirements are satisfied, the Authority shall authorise the transfer of the permit within one month.
- (4) The Gas Regulator may vary, suspend or remove any of the license conditions, or may include additional conditions-
 - a on application by the licensee;
 - b with permission of the licensee;
 - c upon non-compliance by a licensee with a license condition;
 - d if it is deemed necessary for the purposes of this Act; or
 - e on application by any affected party.”
- (5) The capacity established in a transportation licence may be expanded through measures such as additional compression without modification of the licence. In such case, the licensee shall notify the Authority within one month following such expansion. When capacity is increased by construction of pipelines, modification of the licence shall be required.
- (6) Licences may be renewed according to the following:
 - a. at least two years before expiration of the original term of the licence or before expiry of any renewal term that has been authorised, the licensee shall submit an application for renewal to the Authority;
 - b. the procedure for licence renewal shall be pursuant to procedures provided in regulations issued by the Minister; and
 - c. licence renewal shall be granted for a period of up to fifteen years.
- (7) Permits shall be terminated due to:
 - a. expiry of the original term or authorised renewal term of the licence;
 - b. early termination requested by the licensee and granted by the Authority pursuant to this Act;
 - c. revocation pursuant to this Act; and
 - d. operation of administrative or judicial order or law.
- (8) The Authority may revoke a licence or require the licensee to pay a penalty as set out in the Regulations for any of the following reasons:

- a. if the licensee violates the provisions of this Act or fails to fulfil the obligations in the licence;
 - b. if the licensee fails to exercise the rights conferred within the term stated in the licence;
 - c. when the services subject to the licence are interrupted without any reasonable explanation or authorisation of the Minister;
 - d. use of discriminatory practices detrimental to users, and violation of the prices and rates set out by the competent authority;
 - e. assign, encumber or transfer the licence contrary to that provided in the Act; and
 - f. failure to comply with the official Namibian standards, as well as with the conditions stated in the licence.
- (9) In all cases of transfer, a licensee shall ensure continuity of service and shall not suspend operations until such operations are assumed by a new licensee who shall acquire the relevant system. In case of revocation, the Authority shall request the Minister to take the necessary steps to ensure the continuity of the service.

27. Access to land

The Minister, in consultation with the Authority and any other competent authorities, shall take all steps necessary to secure the acquisition of rights of way for gas pipelines as requested by licence holders.

PART VI: TRANSPORTATION AND STORAGE

28. Transportation

- (1) In addition to the foregoing requirements, a transportation licence shall be awarded only when it is clear that the applicants have taken into account the future development of the gas market and its potential for competition. Applicants for transportation licences shall be required to demonstrate their assessment and accommodation of potential future market developments in their licence applications.
- (2) Any transportation licence shall contain provisions designed to ensure that licensees:
 - a. provide transportation services to any producer, other licensee or eligible customer under this Act wherever requested, providing that suitable capacity is available, at such rates, charges and terms and conditions as may be stipulated by the Minister;

- b. provide inter-connection services to any other transportation licensee as may be necessary to provide access to its transportation facilities, at the rates, charges and terms and conditions requested by the Minister; and
- c. where a transportation licensee and any person entitled to apply for access or inter-connection to the transportation system are unable to agree terms for such access or inter-connection, the Authority may, upon being satisfied that there is sufficient capacity in the pipeline and that it is otherwise reasonable to do so, determine reasonable terms for a particular case, and require the licensees to provide access or inter-connection on these terms.

29. Storage

- (1) The right to store gas is vested in the State. The State has the right to award a storage licence to other legal entities by a decision of the Minister, following the advice of the Authority, in co-operation with the Minister of the Environment and other relevant authorities. In addition to the foregoing requirements, the criteria and every other detail of the award of a storage licence shall be included in a Regulation proposed by the Minister.
- (2) Each storage licence shall be granted for a specific location and a defined capacity, in accordance with the general conditions for award of licences.

PART VII: DISTRIBUTION AND MARKETING

30. Distribution within geographical zones

In addition to the licence requirements outlined elsewhere in this Act, the following shall apply to the distribution operations -

- a. a distribution licence shall be granted for a geographical zone that is determined by taking into account all of the elements that will enable the profitable and efficient development of the distribution system, as well as urban development plans approved by the relevant authorities;
- b. the Authority shall determine the geographical zone taking into account the views of relevant local authorities. Such zone shall generally correspond to a population centre;
- c. the first distribution licence for a geographical zone shall be granted either by discretion or through public bidding and shall confer exclusivity rights for twelve years on the construction of the distribution system and the receipt, treatment and delivery of gas and marketing of gas within a geographical zone; and

- d. users in a geographical zone may, after the twelve year exclusivity referred to in subsection c, enter into gas supply contracts with any party, in which case the distributor must allow non-discriminatory access to its distribution system upon payment of the relevant rate.

PART VIII: GAS EXPORT AND TRADE

31. Licensing requirement

No person shall export or import gas without first obtaining a licence. Such licence shall be granted by the Minister after recommendation of the Gas Regulatory Authority and shall contain details of duration, transfer and termination. Applications shall contain such information, as the Minister considers appropriate. An application may be submitted simultaneously with an application for a transportation licence, and if the former is successful granted at the same time.

32. Bilateral agreements

The conditions of such licences shall be compatible with the provisions of any relevant bilateral gas trade agreements entered into between the Government of Namibia and neighbouring countries. Such bilateral agreements include: The Bilateral Gas Trade Agreement between the Government of the Republic of Namibia and the Government of the Republic of South Africa.

PART IX: PRICING

33. Establishment of prices

- (1) The licensees shall ensure that the prices they charge for transportation, storage, distribution or supply of gas have been:
 - a. set up in accordance with a cost reflective methodology agreed with the Authority, and have been approved by the Authority; and
 - b. publicly notified in accordance with the Authority's requirements.
- (2) Where licences contain provisions that prices charged by the licensees should be subject to control, the Authority shall ensure that a procedure for the review of such controls is laid down, either in the licences or in regulations issued by the Authority, and this procedure shall include:
 - a. a timetable for the consideration of tariff applications by the Authority; and

- b. opportunities for customers and other interested parties to participate meaningfully in the tariff approval process.
- (3) In considering and determining the prices which licensees may charge, the Authority shall ensure that licensees are permitted to recover all reasonable costs incurred in the operation of the business on an efficient basis, including the costs of gas purchases, provision for capital depreciation and for a reasonable return on the capital employed.
- (4) The Authority may set prices, which depart from the principles specified elsewhere in this Act, and involve subsidies, providing that it satisfies itself that the undertaking will be adequately compensated from some other source and that the means for recovering such compensation are specified.
- (5) In deciding on the appropriate level of gas transportation or gas distribution carriage charges, gas processing charges and gas supply charges, the Authority should have regard to:
 - a. the protection of customers against monopolistic prices; and
 - b. the promotion of efficiency in a licensee's operations and the quality of service.
- (6) Tariffs for the supply of gas shall be fixed by Minister decision following the recommendation of the Authority. The opinion of the Authority is to be formed subsequent to the submission of proposals by the licensee companies with respect to the tariffs.

PART X: OPERATIONAL REQUIREMENTS

34. Safety standards

Licensees shall have the following obligations:

- a. to immediately notify the Authority and any relevant government bodies of any event resulting from the licensed activities that may endanger public health and safety; such notice shall include a statement of the possible causes of the event, as well as the measures taken and proposed to be taken to address it;
- b. to submit to the Authority within ten days after a hazardous event has been brought under control, a detailed report into the reasons for such an event and the measures taken to control it;
- c. to submit annually a programme, consistent with applicable international standards or future official Namibian standards, for maintenance of the system and to certify compliance with such a programme in accordance with an accredited verification unit;

- d. to maintain a log for the supervision, operation and maintenance of works and facilities that shall be available at the Authority's request;
- e. to train their personnel for the prevention of and response of accidents;
- f. to provide the assistance requested by the relevant authorities in case of emergency or disaster; and
- g. any other obligations established by official Namibian standards.

35. Service obligations

Licensees shall have the following obligations with respect to the provision of services:

- a. to provide an efficient service consistent with the principles of uniformity, homogeneity, regularity, safety and continuity;
- b. to timely publish, as required by the Authority, information concerning available capacity and capacity that is not contracted for;
- c. to serve prompt notice on the Authority concerning any event that implies the modification of the conditions for the provision of service;
- d. to obtain and maintain current insurance as established in the permit sufficient to cover liabilities that may arise;
- e. to implement a permanent service to receive complaints and emergency reports;
- f. to give attention to emergency reports of final users without undue delay;
- g. to report in a timely manner to the Authority any circumstances that adversely affect or may adversely affect the provision of service;
- h. to avoid any discriminatory practices; and
- i. to answer all requests for service within one month of such request as to transporters and within ten days of such request as to distributors.

36. Standards of quality

- (1) The quality of gas shall be checked periodically by the Authority at the metering point. The Authority shall provide all information on quality analysis to the Ministry.
- (2) The Authority shall be responsible for monitoring the calorific value of the gas and presenting such data to the Ministry.

PART XI: USE OF LAND AND ENVIRONMENTAL ASPECTS

37. Expropriation

- (1) A licensee may require access to land and use of such land in pursuit of his powers under the licence. A licensee may by expropriation acquire such land or

- any such right in, over or in respect of land as such licensee may require for the exercise of his powers.
- (2) Prior to such expropriation, a report is required by the Authority:
 - a. That such licensee is unable to acquire any such land or right on reasonable terms, other than terms relating to compensation, by agreement with the owner, and
 - b. That such land or right is reasonably required by such licensee for the exercise of the activities under the licence.
 - (3) Provided that neither the competent authorities may make a finding regarding compensation payable to the owner and provided that where such licensee and the owner cannot reach agreement as to the compensation, such compensation shall be determined in accordance with the provisions of the Expropriation Ordinance 1978 (Ordinance 13 of 1978).
 - (4) Before furnishing its report under subsection (2), the Authority shall at a public hearing determine whether such a licensee is unable to acquire such land or right on reasonable terms, other than terms relating to compensation, by agreement with the owner and whether the land or right in question is so required by such licensee.
 - (5) The Authority shall give at least 14 days notice of the hearing to such licensee and to the owner concerned, who shall be entitled at such hearing to raise his objections against the expropriation.
 - (6) The Authority shall notify the said owner and licensee of its finding.
 - (7) Upon the approval of the Minister to such acquisition being granted, the provisions of sections 15 to 19 inclusive of the Expropriation Ordinance 1978 (Ordinance 13 of 1978), shall *mutatis mutandis* apply in connection with such acquisition, and in such application any reference in those sections –
 - a. to the Executive Committee constituted in terms of section 4 of the South West African Constitution Act 1968 (Act 39 of 1968) and to the Administration of the Territory of South West Africa shall be construed as a reference to such licensee, and
 - b. to section 2 of the said Ordinance and to the said Ordinance shall be construed as a reference to this section.

38. Environmental aspects

- (1) All infrastructure facilities established and operated in connection with a gas supply network shall operate in accordance with the applicable laws with respect to the protection of the environment.

- (2) No pipeline infrastructure shall be laid without an environmental impact assessment first taking place and the results assessed, in accordance with the Environmental Management Act 1998, the Pollution Control and Waste Management Act and the Parks and Wildlife Management Act, where appropriate, including the Petroleum (Exploration and Production) Act, 1991: Regulations relating to the health, safety and welfare of persons employed, and protection of other persons, property, the environment and natural resources, in at or in the vicinity of exploration and production areas, 1999.
- (3) Provision shall be made for the proper restoration of the operating environment to its natural condition, with plans for pipeline decommissioning being submitted according to the environmental laws and the appropriate regulations.

PART XII: MISCELLANEOUS

39. Infringement and sanctions

- (1) Any violation by a licensee of the provisions of this Act or the obligations in its licence shall be punished administratively by the Authority, taking into consideration the severity of the failure. In the first instance, the Authority shall notify the licensee by registered letter of the violation or non-fulfilment, stating a period within which to remedy it, regardless of other sanctions or criminal proceedings that have to take place.
- (2) If, after the period referred to in subsection (1) the violation or non-fulfilment still exists, the Minister after recommendation by the Authority may cancel the licence irrespective of any criminal proceedings or civil litigation against the licensee.
- (3) For a failure to submit information to the Authority as required by Article [] and for failure to comply with other conditions specified in the Act, a fine may be imposed as prescribed in the Regulations.
- (4) The Authority may set a deadline for carrying out orders issued according to this Act and the licence. If such an order is not complied with by the deadline set, the Authority may have the order carried out at the expense of those so ordered.
- (5) If a licence is granted on the basis of incorrect or incomplete information on significant issues or if the licensee fails to observe the conditions of the licence, the licence may be withdrawn by the Minister after a recommendation by the Authority.

- (6) All penalties established in this Section shall be applied without prejudice to any civil or criminal liability that may arise and, if applicable, to revocation of the licence.

40. Right of appeal

- (1) Any dispute arising between the parties to which this Act applies or involving any interested third parties in connection with the transport, storage, distribution and marketing of gas must be submitted in the first instance to the jurisdiction of the Authority.
- (2) Any person who is aggrieved by a determination of the Authority and who is also adversely affected by such determination shall be entitled to file an appeal to any competent court on any of the following grounds:
- a. where there is an error of law apparent on the face of the record;
 - b. where the determination is made on a finding based on no evidence, or on evidence which is legally inadmissible; or
 - c. where there has been a breach of the principles of natural justice.

41. Transitional provisions

The term of the first Chairman of the Authority shall be five years from the date on which the Authority is established, and the term of the other members shall be one, two, three and four years, and the Minister shall determine the term that will apply to each.

42. Amendment or repeal of laws and savings

[If necessary]

Subject to the provisions of this Section, the laws specified in the Schedule, hereto attached, are hereby amended or repealed to the extent set out in the third column thereof.

43. Short title and commencement

This Act shall be called the Gas Act, 2001, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

Parts III and IV of this Act concerning the establishment and operation of the Gas Regulatory Authority will enter into force separately, at a later date to be determined by the Minister by notice in the *Gazette*.