REPUBLIC OF SOUTH AFRICA

PETROLEUM PIPELINES BILL

(As amended by the Portfolio Committee on Minerals and Energy (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF MINERALS AND ENERGY)

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To establish a national regulatory framework for petroleum pipelines; to establish a Petroleum Pipelines Regulatory Authority as the custodian and enforcer of the national regulatory framework; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

DEFINITIONS AND OBJECTS

Definitions

1. In this Act, unless the context indicates otherwise—

"Authority" means the Petroleum Pipelines Regulatory Authority established by section 3;

"Chief Executive Officer" means the person appointed in terms of section 11(1);

"crude oil" means natural mineral oil, including condensate, but excluding petroleum products;

"licensee" means any person holding a licence granted by the Authority under this Act;

"loading facility" means any marine facility that is or can be used to load or off-load petroleum and includes any auxiliary pipelines connected thereto but excludes bunkering facilities;

"Minister" means the Minister of Minerals and Energy;

"payment" includes commercial services in lieu of financial payment provided to the owner or operator of a pipeline, loading facility or storage facility;

"person" includes any organ of state as defined in section 239 of the Constitution;

"petroleum" means crude oil and petroleum products;

"petroleum pipeline" means a pipeline used to transport petroleum excluding those located on the premises of—

(a) a manufacturer of petroleum products;

(b) a storage facility;

(c) a retailer of petroleum products;

(d) an agricultural cooperative;

"petroleum products" means any liquid petroleum fuel and any lubricant, whether used or unused, and includes any other substance which will be used for a purpose for which petroleum fuel or any lubricant may be used;

"regulation" means a regulation made under section 33(1);

"rules" means rules made under section 33(3);

"storage facility" means any bulk storage facility and its auxiliary equipment that is or is intended to be used for the storage of petroleum and excludes storage facilities—

(a) on the premises at which petroleum products are manufactured and where such storage facilities are integral to the process of manufacture;

(b) for own final use;

(c) used for the retailing of petroleum products to the public;

(d) used by an agricultural cooperative exclusively for its members; and

(e) used to transport petroleum by road, rail, sea and air;

"tariff" means a written statement of rates, terms and conditions for services relating to petroleum pipelines, loading facilities or storage facilities;

"this Act" includes the regulations and rules; and
"uncommitted capacity" means capacity determined by the Authority that is not required to meet contractual obligations.

Objects of Act

2. The objects of this Act are to—
(a) promote competition in the construction and operation of petroleum pipelines, loading facilities and storage facilities;
(b) promote the efficient, effective, sustainable and orderly development, operation and use of petroleum pipelines, loading facilities and storage facilities;
(c) ensure the safe, efficient, economic and environmentally responsible transport, loading and storage of petroleum;
(d) promote equitable access to petroleum pipelines, loading facilities and storage facilities;
(e) facilitate investment in the petroleum pipeline industry;
(f) provide for the security of petroleum pipelines and related infrastructure;
(g) promote companies in the petroleum pipeline industry that are owned or controlled by historically disadvantaged South Africans, by means of licence conditions to enable them to become competitive;
(h) promote the development of competitive markets for petroleum products;
(i) promote access to affordable petroleum products; and
(j) ensure an appropriate supply of petroleum to meet market requirements.

CHAPTER 2

AUTHORITY AND MEMBERS

Establishment of Authority

3. The Petroleum Pipelines Regulatory Authority is hereby established as a juristic person.

Powers and duties of Authority

4. 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.

Constitution of Authority

5. (1) The Authority consists of five members appointed by the Minister.

(2) The Minister must designate one of the members appointed under subsection (1) as chairperson of the Authority.

(3) If the chairperson for any reason is unable to perform his or her duties, the other members must choose another person from among themselves to act as chairperson until the chairperson can resume his or her duties or another chairperson is designated by the Minister.

(4) *(a)* A member of the Authority holds office for a period of four years.

(b) The Minister may reappoint a member.

(c) If a member of the Authority ceases to hold office, the Minister may appoint another person in his or her place for the remainder of the term of office of that member.

(5) Members of the Authority must be paid for their services such remuneration and allowances as the Authority may determine with the approval of the Minister and with the concurrence of the Minister of Finance.

Disqualification and requirements regarding appointment of members to Authority

6. (1) A person may not be appointed or remain a member of the Authority if that person—

(a) is not a South African citizen resident in the Republic of South Africa;

(b) is an unrehabilitated insolvent;

(c) has been convicted of an offence involving dishonesty; or

(d) is in the employ of, or affiliated to, an organ of state in any sphere of government, or has any conflict of interest in this regard.

(2) The Minister must appoint, as members of the Authority, persons who—

(a) have adequate legal, technical, business, economic or other experience relevant to petroleum pipelines;

(b) are collectively representative of South African society as a whole; and

(c) demonstrate impartiality and objectivity.

(3) Before appointing members to the Authority, the Minister must by notice in the *Gazette*, call for nominations from members of the public.

(4) All members must—

(a) upon appointment, disclose if they are in the employ of or act as consultants to, or have any relationship with any person, firm, association or company engaged in the petroleum pipelines industry, or have any pecuniary interest in any such firm, association or company;

(b) upon appointment, disclose if their spouse, life partner, child, business partner or associate or employer is in the employ of or acts as a consultant to, or has any relationship with any person, firm, association or company engaged in the petroleum pipelines industry, or has any pecuniary interest in any such firm, association or company; and

(c) notify the Minister and the Authority when those interests change.

(5) A member must not at any time be present during the discussion of, or the making of a decision on, or take part in any, matter before the Authority in which that member or his or her spouse, life partner, child, business partner, associate or employer, other than the State, has a direct or indirect interest.

(6) If a member acquires or contemplates acquiring an interest contemplated in subsection (4)*(a)*, such member must immediately, in writing, declare that fact to the Minister and the Authority.

Vacation of office and termination of appointment

7. (1) A member of the Authority must vacate his or her office if that member—

(a) becomes of unsound mind;

(b) has been absent from more than two consecutive meetings without leave of the chairperson for each absence;

(c) resigns by giving written notification to the Minister;

(d) materially fails to perform any duty imposed on him or her in terms of this Act; or

(e) becomes disqualified from being a member on any of the grounds referred to in section 6(1).

(2) The Minister may terminate the appointment of a member of the Authority if such member contravenes section 9.

Meetings of Authority

8. (1) *(a)* The Authority must meet at such times and places as may be determined by the chairperson.

(b) The chairperson must convene such meetings of the Authority as are necessary for the proper performance of its functions.

(2) The chairperson must, upon a written request of the Chief Executive Officer or two other members, convene a special meeting to be held within two weeks after the date of receipt of such request.

(3) Unless other procedures are prescribed by rule, the chairperson of any meeting of the Authority must determine the procedures to be followed at such meeting.

(4) The quorum for any meeting of the Authority is a majority of its members.

(5) *(a)* The decision of the majority of the members present at a meeting constitutes a decision of the Authority.

(b) In the event of an equality of votes on any matter the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(6) No decision taken by the Authority is invalid merely because of a vacancy on the Authority or because any person not entitled to sit as a member sat as a member at the time when the decision was taken if the rest of the members present at the meeting and entitled to sit as members at the meeting constituted a quorum and the decision was taken by a majority of those members present and entitled to vote.

(7) The Chief Executive Officer, or if unavailable an employee of the Authority designated by the Chief Executive Officer, must attend all meetings of the Authority and has the right to speak, but not to vote, at such meetings.

(8) *(a)* Any meeting of the Authority is open to the public unless confidential, proprietary or commercially sensitive information is tabled for discussion, in which case an affected person must convince the Authority why such information should not be disclosed to the public.

(b) If the Authority takes a decision in any other manner than at a formal meeting, such decision comes into effect immediately but must be recorded in writing, signed by a majority of the members and submitted for noting at the first formal meeting of the Authority following the decision.

(c) The Authority must keep a record of all of its proceedings.

Duties of members of Authority

9. Members of the Authority may exercise all their powers under this Act and must—

(a) perform all their duties in terms of this Act;

(b) act in a justifiable and transparent manner whenever the exercise of their discretion is required;

(c) at all times act in the interest of the Authority and not in their own or sectoral interests;

(d) act independently of any undue influence or instruction;

(e) recuse themselves from and refrain from voting on or discussing any matter before the Authority in which they have a direct or indirect interest; and

(f) act in a manner that is required and expected from the holder of a public office.

Decisions of Authority

10. (1) Any decision of the Authority must be—

(a) consistent with the Constitution and this Act;

(b) in the public interest;

(c) within the powers of the Authority, as set out in this Act;

(d) taken within a procedurally fair process in which all affected persons have the opportunity to submit their views and present relevant facts and evidence at their own expense to the Authority;

(e) based on facts and evidence that must be summarised and recorded with the decision;

(f) in writing; and

(g) explained clearly as to its factual and legal basis and the reasons therefor.

(2) Any decision of the Authority and the reasons therefor must be available to the public.

(3) Any person adversely affected by a decision of the Authority may bring such decision under review by the High Court.

Personnel of Authority

11. (1) The Authority must appoint a Chief Executive Officer for the Authority.

(2) Subject to the directions of the Authority, the Chief Executive Officer is responsible for—

(a) the day-to-day management of the affairs of the Authority; and

(b) administrative control over the employees appointed under subsection (3).

(3) The Chief Executive Officer may appoint employees, or contract with any person, to assist the Authority in the performance of its functions.

(4) The Chief Executive Officer and other members of the personnel of the Authority must be paid such remuneration, allowances, subsidies and other benefits as the Authority, with the approval of the Minister and the Minister of Finance, may determine.

(5) Notwithstanding subsections (1) and (3), the Minister may determine that the Authority appoint or make use of persons employed or contracted by another licensing or regulatory authority falling under the Minister's jurisdiction.

(6) Section 9 applies to any member of the personnel of the Authority, with the changes required by the context.

Funds of Authority

12. The funds of the Authority consist of—

(a) appropriations from the National Revenue Fund;

(b) levies imposed by or under separate legislation;

(c) charges for dispute resolution and other services rendered.

Accounting by Authority

13. (1) The Authority must perform its functions in acordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) The Authority must open one or more accounts in its name with one or more recognised financial institutions and deposit therein all money received from the sources contemplated in section 12.

(3) The financial records of the Authority must be audited by the Auditor-General.

(4) The financial year of the Authority starts on 1 April of one year and ends on 31 March of the following year.

Reporting by Authority

14. The annual report for public entities required in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), must be accompanied by information on the following matters:

(a) Licences granted, amended or withdrawn;

(b) regulations made and directives issued;

(c) the envisaged strategies of the Authority;

(d) the existing position and envisaged commercial developments with respect to the construction and operation of petroleum pipelines, loading facilities and storage facilities;

(e) the position regarding labour, health, safety and environmental issues in the industry;

(f) such other matters as the Authority may consider necessary.

CHAPTER 3

LICENCES

Activities requiring licence

15. (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.

Application for licence

16. (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.

Advertising of application for licence

17. (1) When an application is made for a licence as contemplated in section 16, the applicant must publish a notice of the application in at least two newspapers circulating in the area of the proposed activity in any two official languages.

(2) The advertisement must state—

(a) the name of the applicant;

(b) the object of the application;

(c) the place where the application will be available for inspection by any member of the public;

(d) the period within which any objections to the issue of the licence may be lodged with the Authority;

(e) the address of the Authority where any objections may be lodged; and

(f) that objections must be substantiated by way of an affidavit or solemn declaration.

(3) The advertisement contemplated in subsection (1) must be published for such period or in such number of issues of a newspaper as may be prescribed by rule.

Particular information to be supplied by applicant

18. Before considering an application for a licence in terms of this Act, the Authority—

(a) if it is of the view that the proposed construction of a petroleum pipeline, loading facility or storage facility should be altered to provide access to third parties, must inform the applicant of that view and request the applicant to supply reasons as to why the application should not be considered subject to the imposition of such condition;

(b) may direct the applicant to alter the plans for the proposed construction of petroleum facilities in order to comply with applicable health, safety, security and environmental legislation;

(c) must furnish the applicant with all substantiated objections contemplated in section 17(2)*(f)* in order to allow the applicant to respond thereto; and

(d) may request such additional information as may be necessary to consider the application properly.

Finalisation of application

19. (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

(b) the operation of petroleum pipelines or pipeline systems, loading facilities and storage facilities.

Conditions of licence

20. (1) The Authority may impose licence conditions within the following framework of requirements and limitations:

(a) A licensee must carry out the construction or operations activities for which the licence is granted;

(b) to promote historically disadvantaged South Africans, in the manner prescribed;

(c) to provide for an appropriate supply of petroleum products to meet market requirements;

(d) licensees must provide the prescribed information to the Authority on the commercial arrangements regarding the participation of historically disadvantaged South Africans in the licensees' activities;

(e) the petroleum loading, pipeline and storage activities of vertically integrated companies may be required to be managed separately with separate accounts and data and with no cross-subsidisation;

(f) a petroleum pipeline may be licensed for either crude oil or petroleum products, or both, as long as sufficient pipeline capacity is available for crude oil to enable the uninterrupted operation of the crude oil refinery located at Sasolburg, to operate at its normal operating capacity at the commencement of this Act and for so long as that refinery continues as a going concern;

(g) shippers of petroleum must have access to petroleum pipelines and a pipeline's capacity must be shared among all users and prospective users thereof in proportion to their needs and within the commercially reasonable and operational constraints of the pipeline, subject to paragraph *(f)* and an appropriate payment to reserve the required capacity as a condition of service;

(h) interested parties must be allowed to negotiate changes with pipeline licensees in the routing, size and capacity of proposed petroleum pipelines;

(i) pipeline licensees are not obliged to incur any additional expenditure to provide the changes referred to in paragraph *(h)* and the total cost for the pipeline must be shared equitably between the pipeline licensee and the parties requesting the change;

(j) licensees must allow interconnections with the facilities of other licensees, as long as the interconnection is technically feasible and the person requesting the interconnection bears the increased costs occasioned thereby;

(k) third parties must have access to loading facilities with the capacity being shared among all users and prospective users in proportion to their needs, subject to an appropriate payment to reserve the required capacity as a condition of service;

(l) interested parties may negotiate with loading facility licensees for changes in the capacity of loading facilities;

(m) loading facility licensees are not obliged to incur any additional expenditure to provide the changes contemplated in paragraph *(l)* and the total cost for the loading facility must be shared equitably between the loading facility licensee and the party requesting the change;

(n) third parties must in the manner prescribed by regulation have access on commercially reasonable terms to uncommitted capacity in storage facilities: Provided that an applicant for a storage facility licence or an amendment of such licence may elect to give users access to the facility on the basis that the capacity is shared among all users in proportion to their needs;

(o) interested parties may negotiate with storage licensees for changes in the capacity of storage facilities;

(p) storage licensees are not obliged to incur any additional expenditure to provide the changes contemplated in paragraph *(o)* and the total cost for the storage facility must be shared equitably between the storage licensee and the party requesting the change;

(q) tariffs set by the Authority for petroleum pipelines;

(r) tariffs approved by Authority for loading facilities and storage facilities;

(s) licensees must maintain their licensed loading facilities, petroleum pipelines or storage facilities in a fully operational condition;

(t) the time period within which petroleum pipelines, loading facilities or storage facilities must become operational must be fixed;

(u) licensees must provide information necessary for the Authority to perform its functions;

(v) standards of construction and operation approved by the Authority, including incorporating by reference any existing standard in terms of other legislation;

(w) health, safety, and environmental standards required by the Authority, including incorporating by reference any existing standard in terms of other legislation;

(x) licensees must—

(i) submit to the Authority annually an emergency plan for implementation in the event of system failures, accidents and other emergencies;

(ii) train the appropriate operating and maintenance employees with regard to the applicable portions of the plan; and

(iii) establish liaison with the appropriate emergency response officials with respect to the plan;

(y) petroleum pipeline licensees must have a plan for reviewing changes in conditions affecting the integrity and safety of their pipelines, including periodic patrolling and reporting of construction activities and such changes of conditions;

(z) licensees must establish and maintain liaison with local authorities that issue permissions for excavations by third parties that could damage the licensees pipelines;

(aa) licence conditions may be temporarily changed by the Authority in an emergency and, where possible, in consultation with the licensee; and

(bb) strategic security standards required by the Authority, including incorporating by reference any existing standard in terms of other legislation.

(2) *(a)* Any person aggrieved by a condition imposed by the Authority in terms of subsection (1) may in the prescribed manner apply to the Authority to amend or delete the condition.

(b) If the aggrieved person is not the licensee the Authority must inform the licensee of the application.

(c) Whenever there is an application in terms of paragraph *(a)*, the Authority must conduct an investigation and may, for that purpose, summon witnesses to appear before it.

(d) At the conclusion of the investigation the authority must grant or refuse the application and furnish reasons for its decision.

Non-discrimination

21. Licensees may not discriminate between customers or classes of customers regarding access, tariffs, conditions or service except for objectively justifiable and identifiable grounds approved by the Authority.

Term of licence

22. (1) Any licence issued in terms of this Act is valid for a period of 25 years.

(2) A licensee may apply to have his or her licence renewed.

(3) Every application for renewal must be granted if the licensee has complied with the licence conditions.

(4) When renewing a licence the Authority may impose different conditions within the framework set out in section 20.

(5) A licensee may not sell or assign his or her licence.

(6) Any person taking over the business of a licensee must apply for a licence in his or her own right and section 15 applies in respect of such person.

Amendment of licence

23. (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.

Revocation of licence on application

24. (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.

Contraventions

25. (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.

Revocation of licence by court

26. (1) The Authority may by way of application on notice of motion apply to the High Court for an order suspending or revoking a licence if there is any ground justifying such suspension or revocation such as failure of the licensee to carry out the construction and operation activities for which the licence was granted.

(2) The court before which an application is made under subsection (1) may grant or refuse the application, and may make such order as to costs and maintaining the service of the licensee as it may deem fit.

Health, safety, security and environment

27. The Authority may require a licensee to submit financial security, or make such other arrangements as may be acceptable to the Authority, to ensure compliance with any licence condition relating to health, safety, security or the environment, prior to, during or after the period of validity of the licence.

Setting and approval of tariffs

28. (1) The Authority must set as a condition of a license the tariffs to be charged by a licensee in the operation of a petroleum pipeline and approve the tariffs for storage facilities and loading facilities.

(2) A tariff charged in terms of subsection (1)—

(a) must be—

(i) based on a systematic methodology applicable on a consistent and comparable basis;

(ii) fair;

(iii) non-discriminatory;

(iv) simple and transparent;

(v) predictable and stable;

(vi) such as to promote access to affordable petroleum products;

(b) becomes effective from the date set out in the licence;

(c) must be reviewed by the Authority within the period set out in the licence; and

(d) may be adjusted by the Authority on review.

(3) The tariffs set or approved by the Authority must enable the licensee to—

(a) recover the investment;

(b) operate and maintain the system; and

(c) make a profit commensurate with the risk.

(4) The Authority must monitor the application of tariffs and take appropriate action when necessary to ensure that they are applied in a non-discriminatory manner and licensees must provide the information required by the Authority in this regard.

(5) A licensee may request the Authority to review its tariff from time to time and may submit a proposal to the Authority in this regard, and—

(a) such proposed tariff, if set or approved, comes into effect from the date determined by the Authority;

(b) the existing tariff remains in force until a new tariff takes effect.

(6) A licensee may not charge a tariff for the licensed activity in question other than that set or approved by the Authority.

CHAPTER 4

GENERAL PROVISIONS

Entry, inspection and gathering of information by Authority

29. (1) For the purposes of this Act, any person authorised thereto in writing by the Authority may—

(a) at all reasonable times enter any property on which a licensed activity is taking place and inspect any facility, equipment, machinery, book, account or other document found thereat; and

(b) require any person to furnish the Authority with such information, returns or other particulars as may be necessary for the proper administration of this Act.

(2) The Authority may require that the accuracy of any information, return or particular furnished in terms of subsection (1) be verified on oath or by way of a solemn declaration.

(3) A person authorised by the Authority as contemplated in subsection (1) must show his or her authorisation to any person requesting it.

(4) No information obtained by the Authority in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or proprietary nature may be made public or otherwise disclosed to any person without the permission of the person to whom that information relates, except in terms of an order of the High Court.

Voluntary resolution of disputes by Authority

30.(1) *(a)* The Authority may, with the approval of all parties to a dispute, act as mediator or arbitrator in any matter falling within the ambit of this Act.

(b) When acting as arbitrator, the Authority must issue a decision on the matter.

(2) *(a)* The Authority may, on request of the parties involved, appoint a suitable person acceptable to all the parties to act as mediator or arbitrator on its behalf in any matter contemplated in subsection (1).

(b) Any decision of an arbitrator so appointed must be regarded as being the decision of the Authority.

(3) Any decision taken by the Authority acting as arbitrator or by an arbitrator contemplated in subsection (2) is binding on the parties to the dispute.

Investigations by Authority

31. (1) The Authority must conduct investigations into complaints of—

(a) discrimination regarding tariffs or conditions of access;

(b) failure to obtain access to petroleum pipelines, loading facilities or storage facilities; and

(c) failure to abide by tariffs set or approved by the Authority.

(2) A complaint contemplated in subsection (1) must be submitted within the period and in the manner prescribed by rule and be accompanied by—

(a) supporting information; and

(b) a description of efforts made to resolve the dispute before resorting to the Authority.

Expropriation of land by Authority

32. (1) In pursuit of the objects of this Act, the Authority may expropriate land or any right in, over or in respect of land on behalf of a licensee in accordance with section 25 of the Constitution.

(2) The procedure to be followed in giving effect to subsection (1) must be prescribed by regulation.

(3) The Authority may exercise the powers contemplated in subsection (1) only if it is satisfied that—

(a) a licensee is unable to acquire land or a right in, over or in respect of such land by agreement with the owner; and

(b) the land or any right in, over or in respect of such land is reasonably required by a licensee for facilities which will enhance the Republic's petroleum pipelines infrastructure.

Regulations and rules

33. (1) The Minister must as appropriate, by notice in the *Gazette,* make regulations regarding—

(a) ensuring fair administrative action by the Authority;

(b) the rehabilitation of land used in connection with a licensed activity, including the provision of financial security for rehabilitation purposes and the composition and amount of such security;

(c) the procedure to be followed and fees to be paid in mediation and arbitration proceedings;

(d) the procedure to be followed at expropriation proceedings, and the time within which such proceedings must be conducted;

(e) the rendering of information to the Authority;

(f) mechanisms to promote historically disadvantaged South Africans;

(g) liaison between licensees and local authorities as contemplated in section 20(1)*(x)* and *(z)*; and

(h) any other matter that may or has to be prescribed, or determined or provided for by regulation in terms of this Act.

(2) Before promulgating regulations contemplated in subsection (1), the Minister must—

(a) consult with the Authority;

(b) invite public comments on such regulations; and

(c) duly consider the comments.

(3) The Authority may make rules regarding—

(a) the public notification of, and the procedures to be followed at meetings of, the Authority;

(b) the keeping of records by the Authority;

(c) the form, manner and contents of licence applications;

(d) the publishing of licence applications and the contents thereof;

(e) the form and manner in which objections to licence applications must be lodged and the furnishing thereof to the applicant for his or her response thereto;

(f) the procedure to be followed in considering licence applications;

(g) the publishing of information relating to uncommitted capacity;

(h) the procedure to be followed in the variation, suspension, removal or the revocation of licence conditions;

(i) the procedures to be followed in investigations, including the summoning of witnesses and the payment of witness fees;

(j) the inspection of and enquiry into the construction and operation of any petroleum pipeline, loading facility or storage facility; and

(k) consultation with interested and affected parties.

Prohibition of agreements contrary to Act

34. (1) An agreement may not contravene any—

(a) provision of this Act;

(b) licence granted by the Authority;

(c) condition attached to a licence granted by the Authority;

(d) regulation, rule or directive issued under this Act.

(2) Any agreement in contravention of subsection (1) is void.

Transitional provisions

35. (1) Any person owning petroleum pipelines, loading facilities or storage facilities prior to the commencement of this Act must, within six months after the commencement of this Act, submit to the Authority an application for a licence in terms of this Act.

(2) *(a)* The Authority must grant a licence contemplated in subsection (1), unless it finds that the applicant is unable or unwilling to own or operate petroleum pipelines, loading facilities or storage facilities in a manner consistent with the objectives and provisions of this Act.

(b) Any licence issued in terms of paragraph *(a)* must for all purposes be regarded as a licence issued in terms of section 19.

Short title and commencement

36. This Act is called the Petroleum Pipelines Act, 2003, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE PETROLEUM PIPELINES BILL, 2003

1. BACKGROUND

A network of pipelines is used to transport crude oil and petroleum products between the port of Durban, the Durban refineries, the crude and synthetic fuels refineries in Gauteng and Mpumalanga and between depots.

The petroleum industry is highly dependent on this network. The pipeline network is thus of strategic importance to the economy as the economy depends on the stable supply of liquid fuels and hence the ongoing effective operation of the petroleum pipeline and storage infrastructure.

To date, the state has managed the operation of much of the pipeline network. It has now become a possibility that parties other than national Government may become active in the ownership and operation of petroleum pipelines. It is therefore incumbent on Government to introduce regulatory measures to ensure the efficient operation of the pipelines network and the orderly development of the network in future.

To respond to the need for regulatory intervention, a Petroleum Pipelines Bill has been drafted. The main features of the Bill are as follows:

(a) The establishment of a petroleum pipeline regulatory authority and its—
  (i) powers and duties;
  (ii) constitution;
  (iii) staffing;
  (iv) funding, accounting and reporting.

(b) The requirements for licensing or registration in respect of the construction and operation of, and the provision of prescribed commercial services in relation to, a crude oil pipeline, petroleum product pipeline or an off-leading facility.

(c) The process of licensing or registration and the conditions of licence.

2. OBJECTS OF BILL

The objects of the Bill are to—

(a) promote competition in the construction and operation of petroleum pipelines, loading facilities and storage facilities;

(b) promote the efficient, effective, sustainable and orderly development, operation and use of petroleum pipelines, loading facilities and storage facilities;

(c) ensure the safe, efficient, economic and environmentally responsible transport, loading and storage of petroleum;

(d) promote fair and equitable access to petroleum pipelines, loading facilities and storage facilities.

(e) facilitate investment in the petroleum pipeline industry;

(f) provide for the security of petroleum pipelines and related infrastructure;

(g) promote companies in the petroleum pipeline industry that are owned or controlled by historically disadvantaged South Africans by means of licence conditions to enable them to become competitive;

(h) promote the development of competitive markets for petroleum products; and

(i) promote access to affordable petroleum products.

3. FINANCIAL IMPLICATIONS FOR STATE

The administration of the Bill will require the establishment of a Regulator. Cabinet has directed that a rationalised Energy Regulator be established for the regulation of various aspects of the energy sector. Discussions are currently underway to establish such an "Energy Regulator", which will essentially entail a broadening of the remit and capacity of the existing National Electricity Regulator. This process will be finalised in close consultation with the Ministries for Public Service and Administration and of Finance, as directed by Cabinet on 4 April 2001.

The Department will be assisting National Treasury in the drafting of a money Bill to empower the Regulator to collect levies for the purpose of meeting the general administrative and other costs of the Regulator and the functions performed by the

Regulator. There will be no financial implications for the State, except that the levy will release the State from the financial burden of funding the Regulator.

4. CONSULTATION PROCESS

In the drafting of the Bill, key stakeholders, inter alia the petroleum industry associations, Petronet and other government departments were consulted at several workshops. The draft Bill was also published for comment before the version approved by Cabinet was submitted for introduction in Parliament. Comments were received from Groundwork (Environmental NGO); Cosatu (Labour); Petronet (Transnet subsidiary); the South African Institution of Civil Engineering, as well as private individuals and individual oil companies.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Minerals and Energy are of the opinion that this Bill should be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.