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30 July 2021

Our ref: 10971SE

**PORTFOLIO COMMITTEE ON MINERAL
RESOURCES AND ENERGY**

For attention: Mr. Arico Kotze

Per email: akotze@parliament.gov.za

Dear Sir / Madam,

**RE: GAS AMENDMENT BILL [B9 - 2021]
INVITATION TO COMMENT: COMMENTS BY THE GREEN CONNECTION**

We act for The Green Connection ("our client"). We are instructed to lodge comments in writing in response to the Gas Amendment Bill [B9 - 2021] ("the Bill"), as we hereby do.

We also carry instruction to make a verbal presentation and note our client's interest therein and commitment thereto at this point.

We take this opportunity to thank you for your considered attention.

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INTRODUCTION

Our client is an NPO which promotes public participation in decisions about the environment as a means to achieving sustainable development. This ensures protection and fulfillment of the right to an environment not harmful to health or wellbeing as provided for in Section 24 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).

Our client is opposed to the further development of the (imported and otherwise) oil and piped gas industries and, with these comments, wishes to highlight its most relevant objectives:

- a) to encourage opportunity for public participation in the implementation of the Gas Act, 48 of 2001 (“the Act”) and its amendment/s;
- b) to ensure environmental protection is not further diluted by the Bill;
- c) to ensure that an “applicant”, “customer”, “distribution company”, “eligible consumer”, “end consumer”, “licensee”, “private sector party” and “trader” (or any other party, natural or juristic, envisaged by the Act or the Bill) may have a license refused and/or revoked if found to be polluting; and
- d) to ensure that the Bill caters for biogas, hydrogen and other non-fossil gas as this may become commonly utilized in the future (thereby obviating the need for further amendment/s to the Act in the future from time to time).

Several specific occurrences in 2021 have emphasised trends in energy technology and climate change. Our client refers specifically to *Net Zero by 2050: A Roadmap for the Global Energy Sector*¹ (“the Net Zero report”), a report by the International Energy Agency (“IEA”), the outcomes of the G7 summit² and several international climate change court cases, all of which push for a move away from fossil fuels. There is a need for the bolstering of South African energy planning and climate change commitments.

The Net Zero report makes numerous recommendations, but the most important components to reaching net zero emissions by 2050 is that there should be massive investment in renewable energy (“RE”), but **no new investments in coal, oil or gas from 2021**. This validates our client’s criticism that the South African Integrated Resource Plan 2019³ (“IRP2019”) still places limits on the use of RE while expanding on the use of coal. The Net Zero report furthermore indicates that South Africa must be careful in its use of gas and that gas is not necessary in South Africa. It is critical that stock is taken of the increasing economic risk associated with gas and the rise of alternatives thereto.

Before commenting on individual provisions, we emphasise our client’s support once more for public participation and that this element needs to be catered for to a greater extent in the Bill, inter alia at:

- Section 15(1): the public should be afforded the opportunity to participate in the addition or removal of a “licensed activity”.

¹ <https://www.iea.org/reports/net-zero-by-2050>.

² <https://www.g7uk.org/official-documents/>.

³ <http://www.energy.gov.za/IRP/2019/IRP-2019.pdf>.

- Section 18: the inclusion of public participation in a determination of criteria as specified by the Minister from time to time, specifically pertaining to what would be considered “national interest”.
- Proposed Section 28A(1)(b): each revision of the gas master plan should be accompanied by a Strategic Environmental Assessment (“SEA”) of which public participation is an essential element.
- Proposed Section 28B(13)(b): any deviation from a gas master plan must undergo a public participation process **after** undergoing a proper consultation process.

A further concern to our client is that there is no provision whatsoever for an Environmental Mitigation Plan (“EMP”) in the Bill.

We set out our client’s specific comments sequentially hereunder.

AD SERIATIM COMMENTS

DEFINITIONS

1. Our client supports the specific inclusion in the Bill at (k), “gas”, of biogas, hydrogen and organically and sustainably sourced gases from renewable sources. Our client is a supporter of renewable energy and promotes research and development into energy efficiency and the Bill does not make sufficient, or any, provision therefor despite a reference to “biogas” in Schedule 1.

2. Furthermore, with reference to (x), "private sector party", our client is of the view that the Bill does not ensure that such a party would indeed be free of government influence. The definition should at least cater for latent political/governmental influence over, and in, a patently private party.
3. The definition at (l), "gas master plan", is unacceptably vague. It is not clear what is meant by "indicative" nor "forward-looking" nor what this gas master plan will actually be or how it will be implemented. It is also unclear whether the gas master plan is, or has any connection with, the Gas Utilisation Master Plan ("GUMP") currently being finalised by the Department: Mineral Resources and Energy ("the Department").
4. Additionally, there is an absence of definitions for such as "environmentally responsible", "safe/safety" and "sustainable". It is also not clear to what the term "national interest" refers as used in the Bill and this term is not defined. The term "national interest" must also be specifically contrasted to "public interest" as used in the Expropriation Act, 63 of 1975 ("the Expropriation Act").

SECTION 2

5. The Bill does not contain a commitment to "promote the use of diverse energy sources and energy efficiency" as included in the objects of the Electricity Regulation Act, 4 of 2006 ("the Electricity Act")⁴ or any similar commitment.

⁴ Section 2(e).

SECTION 15

6. In addition to our client's submission supra regarding public participation, our client also submits that it is not clear why it is necessary to allow the arbitrary removal of a licensed activity **in any event**.

SECTION 16

7. Although the relevant section already makes provision for the applicant's "plans and ability" to comply with environmental legislation, it does not otherwise make provision for environmental considerations in contemplating an application for a gas license.⁵

PROPOSED SECTION 18A

8. It is not clear to our client how and why this amendment is included in the Bill when read with the Rules in terms of the Gas Act, 48 of 2001 (as pertaining to the National Energy Regulator) ("the Rules") which Rules seem to provide for these procedures.

SECTION 21

9. Our client is once more of the view that "principles" as referred to in Section 21(1)(d) is unclear, and that the principles which might be prescribed by the Minister ought to be formulated with input from a public participation process.

⁵ Glazewski, J. (2004) *Environmental Law in South Africa* 2nd Ed. LexisNexis Butterworths: Durban.

10. Furthermore, with respect to the contemplated Section 21(1)(o) the term "undue discrimination" should be defined or expanded upon to provide clarity in interpretation.

PROPOSED SECTION 22A

11. Our client is opposed to exclusivity in general as it advances monopolies and fixed price regimes.

PROPOSED SECTION 22B

12. The wording of Section 22B(1)(b) might extend even further to ensure that the public interest overrides private profiteering. The provisions and principles of the Competition Act, 89 of 1998 could be a guideline or incorporated by reference.

PROPOSED SECTION 23

13. Our client welcomes the removal of the fixed twenty-five-year period in the Act. In light of the uncertainty of future emissions as recognized internationally⁶ it should be further possible to terminate a license based on other factors such as the public interest.

⁶ *Greenpeace Nordic Ass'n v Ministry of Petroleum and Energy* (European Court of Human Rights).

SECTION 26

14. Although subsection (1)(d) does not deal with a closed list, the said subsection does not specifically include non-compliance with concerns relating to the public interest and environmental considerations.

15. The fine contemplated in Section 26(5) remains R2,000,000.00 as at date of promulgation of the Act. The said fine might be increased with consideration to the passing of time from enactment so as to maintain the disincentive which the fine contemplates.

16. Section 26(6) fails to make provision for loss to the environment in general in addition to loss to, or damage suffered, by a person.

PROPOSED SECTION 28B

17. Our client is of the view that it is undesirable for any industry to operate without a determination.

18. Further, "national interest" as referred to in proposed Section 28B(13)(b), and also referred to elsewhere in the Bill (but only once in the Act)⁷ should be defined and should incorporate an explicit public interest component.

⁷ At Section 19.

SECTION 31

19. Seeing as provision is made for an investigation by request or referral by media, it is necessary that inter alia a natural person in her/his own interest, or in the public interest, may by request or referral initiate an investigation.

20. Our client supports at minimum a provision for organizations acting in the public interest (being not "media" organizations) to file/open/lodge complaints.

SECTION 32

21. The inclusion of "or an applicant" is not acceptable. Expropriation cannot take place in favour of an applicant. A party must first have achieved a contract and/or license.

PROPOSED SECTION 32A

22. Provision ought to be made for a "rehabilitation fund" which is a condition of any license, monies to be held in a separate banking account. Contributions to the fund might be tax deductible and any growth might be tax free as an incentive to environmental protection.⁸

⁸ A regime is contemplated not dissimilar to that in the Mineral and Petroleum Resources Development Act, 28 of 2002.

SECTION 34

23. Our client is of the view that Minister should make rules pertaining to public consultation. If such rules are not in place, it leaves questions open as to how public consultation and participation would be achieved and regulated.

24. Our client applauds the inclusion of powers of the Energy Regulator to make rules.

PROPOSED SECTION 34A

25. Our client endorses that it should be an offence to act in contravention of a license as envisaged, not only to act as envisaged by Section 15(1) without a license.

26. Our client is of the view, with respect to Section 34A(1)(h) only, that the penalty contemplated is excessive.

PROPOSED SECTION 34C

27. Our client is of the view that this provision authorizes too much power to be exercised by the Minister.

28. Our client is of the further view that this provision must be either deleted or amended so as to make provision for public participation as far as is possible in line with the general trend of their comments.

SCHEDULE 1

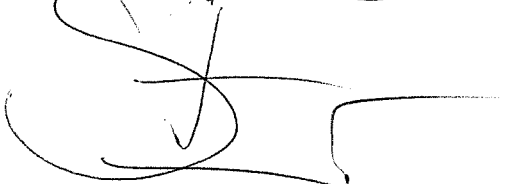
29. As Item 2 refers to “biogas” it is necessary that biogas should be included in the definition of “gas” supra.⁹ This will promote clarity and uniformity and bring the Bill and Act in line with current developments.

MEMORANDUM ON THE OBJECTS OF THE GAS AMENDMENT BILL, 2021

30. The view expressed at 6.18, being that it is not necessary to refer the Bill to the National House of Traditional Leaders and Khoi-San Leaders, is not supported by our client.

31. As the Bill contemplates expropriation of land it is highly possible that it may impact upon traditional or Khoi-San Communities and touch on issues of land reform, access to land and land tenure.

Yours faithfully,



CHENNELLS ALBERTYN

Per: S Etsebeth

⁹ Par. 1 hereof.