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7 August 2026

Re: THE GREEN CONNECTION - COMMENTS ON GAS BILL [B6-2026]

EXECUTIVE SUMMARY

The Green Connection submits that the Gas Bill [B6-2026] should be withdrawn. If Parliament nonetheless proceeds with it, the amendments recommended in these comments are, as a minimum, required.

The Gas Bill is not a technical modernisation of an outdated statute. Clause 40(1) repeals the Gas Act, 2001 in its entirety and replaces it with a statute whose express purpose is to promote and facilitate gas facilities, infrastructure, services, investment and trade — principally an imported LNG market that does not yet exist. It forms part of a broader legislative architecture, together with the Upstream Petroleum Resources Development Act and the South African National Petroleum Company Bill, none of which contains any climate change provision.

The Green Connection's main concerns are the following:

The Bill is silent on climate change

It makes no reference to the Climate Change Act, to the national greenhouse gas emissions trajectory, to sectoral emissions targets or carbon budgets, or to the just transition. Section 7(1) of the Climate Change Act obliges every organ of state to review and harmonise its laws with that Act; that has not been done. The decisions for which the Bill provides — ministerial determinations, integrated energy projects, licences, State guarantees and exemptions — are precisely the decisions that may significantly affect the Republic's ability to mitigate.

The premise that gas is a lower-emission fuel is unstated and untested

The Bill assumes, without saying so, that LNG is a bridging fuel. That assumption depends entirely on methane leakage rates, and the Bill contains no measurement, reporting, verification or leak detection requirement of any kind. It permits licences of up to 25 years, renewable, with a statutory expectation of full cost recovery — building multi-decade commitments into infrastructure that must operate in a net zero economy by 2050. The 'gas cliff' is a concentrated industrial supply problem, foreseeable for over a decade, and should not be treated as an emergency justifying truncated participation.

Energy security is not synonymous with expanded gas

Energy security is inseparable from affordability, ecological sustainability and the just transition. Neither imported nor domestically produced LNG insulates South African consumers from global price volatility, because both trade at international parity prices.

The socio-economic impact assessment addresses a different Bill

The SEIAS Report is titled, and analyses, the *Gas Amendment Bill*; it uses clause numbering that does not correspond to the Bill before the Committee; it cites a 1975 expropriation statute that has been repealed; and its sign-off has lapsed on the template's own terms. It predates the commencement of the Climate Change Act and South Africa's Second NDC. It records a public concern about climate consistency as having been accommodated when it was not, and it treats the Republic's climate obligations as an external threat to the gas market rather than as legal constraints. It omits gas price volatility, stranded asset risk, methane, every environmental statute, and small-scale fishing and fishing-dependent communities entirely.

The repeal of the Gas Act removes binding protections without replacing them

Clause 40 saves nothing beyond existing licences and acts of the Energy Regulator. The Piped Gas Regulations, 2007 and the Gas Act Rules, 2021 — which currently contain the mandatory fair administrative action procedure, the expropriation hearing and compensation procedure, the decommissioning closure plan requirement, the price transparency obligations, and the requirement that licence applications be advertised in two local newspapers in two official languages — are left without any express saving, and their survival after the repeal is uncertain. They are replaced by discretionary powers to remake them, leaving a regulatory gap on commencement.

Power is concentrated in the Minister without corresponding participation rights

Clause 11 permits any licensed activity to be de-licensed, on no stated criteria, with no assurance it remains regulated at all. Clause 28 determinations require no concurrence from the Energy Regulator or the Minister of Finance and no public participation, yet bind the Regulator, guarantee cost recovery, and are backed by an unconstrained power to bind the State to any financial commitment that is 'necessary or expedient'. Clause 39 permits exemption from compliance with the whole Act, on open-ended grounds, without consultation, duration limit or reporting to Parliament — and offers an alternative route to authorising major LNG infrastructure with no public participation whatsoever.

Expropriation is broadened and its safeguards removed

Under the Gas Act, expropriation was exercised by the Regulator, only on a licensee's request, only where land was reasonably required, and only after a public hearing with a mandatory compensation recommendation and a right to approach a court. Clause 33 of the Bill transfers the power to the Minister, who may act on his own initiative, for 'any gas facilities', without Bill requiring a licensee's request, a prior attempt at voluntary acquisition, or any prescribed compensation procedure — safeguards that currently exist under the Piped Gas Regulations. It makes no provision for holders of informal or customary rights in land, notwithstanding the State Law Advisers' own conclusion that the Bill may affect land belonging to traditional communities or Khoi-San communities.

Public participation and fair administrative action are materially weakened

There is no provision for objectors to respond to information filed after the objection period, no consultation on licence renewals, licence condition reviews or registrations, and no public participation on the tariff methodology. The duty to furnish reasons to objectors, the statutory minimum for advertising applications, and the express right of appeal to the High

Court all disappear. At the same time, the Bill directs the Energy Regulator to promote the industry it regulates, removes its competition function, binds it to ministerial determinations and subjects it to ministerial imperatives — leaving an objector before a decision-maker that is not in a position to refuse.

Consumers are exposed to international gas prices with no effective protection

The Energy Regulator can regulate licensee margins, not the cost of imported gas. The statutory architecture is one of cost pass-through, transmitted through gas-to-power to every electricity consumer, including low-income households — while the existing price transparency protections are repealed and the pricing methodology is left to rules that need never be made and need never be published in draft.

Planning, decommissioning and financial provision are inadequate

The gas master plan is to be prepared in the absence of a current Integrated Energy Plan, on terms of reference that presuppose the expansion of gas, with no requirement to quantify emissions or to test a scenario in which gas demand does not grow. Decommissioning, rehabilitation and financial provision are left wholly to discretion, at the very point where stranded asset risk becomes a public liability.

Process

The Green Connection supports the tagging of the Bill as a section 76 Bill and its referral to the National House of Traditional and Khoi-San Leaders, but notes that what was published for public comment was an amendment Bill, not a Bill repealing and replacing the Gas Act. It asks that the provinces and the public be afforded a full opportunity to consider the Bill, including provincial hearings in the affected coastal provinces, and requests the opportunity to make oral submissions to the Committee.

1. Introduction

These comments are submitted on behalf of the Green Connection[1] in response to an

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[1] The Green Connection is a registered non-governmental organisation that believes economic growth and development, improvement of socio-economic status and conservation of natural resources can only take place within a commonly understood framework of sustainable development. It aims to provide practical support to both the government and non-governmental/civil society sectors, which are an integral part of

invitation by the Chairperson of the Portfolio Committee on Electricity and Energy for the submission of written comments on the draft Gas Bill [B6-2026].

The Green Connection is an organisation that focusses on environmental justice, and its work includes supporting small-scale fishers and fishing-dependent communities that experienced discrimination and dispossession during the apartheid era. These historically disadvantaged and vulnerable fishers and communities are at risk of disproportionately bearing the negative impacts of the gas facilities, infrastructure, services, investment and trade that the Gas Bill is intended to promote and facilitate. Such risks include major oil spills from offshore oil and gas drilling that would have potentially catastrophic impacts on marine ecosystems and livelihoods. The Green Connection makes these comments in the public interest and the interest of protecting the environment (for the benefit of current and future generations that could be affected).

These comments are structured as follows. **Part A** sets out the Green Connection's main thematic issues of concern with the Bill. **Part B** sets out additional comments on specific clauses and procedural issues. Recommendations are set out at the end of each section.

The Green Connection requests the opportunity to make oral submissions to the Committee when public hearings are held.

PART A: MAIN THEMATIC ISSUES OF CONCERN

2. Gas Bill in Conflict with the Climate Crisis and the State's Climate Change Obligations

The Green Connection is concerned that the Gas Bill is intended to promote and facilitate the creation of a gas market (primarily liquefied natural gas (LNG), a fossil fuel) as part of the legislative architecture implementing government’s broader policy to promote and facilitate accelerated fossil fuel exploration and production and the development of the fossil fuel sector across the upstream, midstream and downstream value chain — notwithstanding the climate crisis, the urgent need for immediate, rapid and large-scale reductions in greenhouse gas (GHG) emissions, and South Africa's international climate change commitments.

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sustainable development. The Green Connection is an environmental and social justice civil society organisation that promotes sustainable livelihoods and the achievement of environmental rights.

The Climate Crisis

The Climate Change Act[2] was enacted recognising that anthropogenic climate change represents an urgent threat requiring an effective and progressive response; that South Africa has both a role to play in reducing global GHG emissions and acute vulnerability to climate impacts; that climate variability threatens human health, food and water security, biodiversity, coastal infrastructure and human settlements; and that a just transition to a climate-resilient, low-carbon economy and society is a national sustainable development priority. Those recognitions form part of the operative legal framework against which the Gas Bill must be assessed.

The international scientific and institutional context has hardened materially since the Gas Act[3] was enacted in 2001, and indeed since the Bill was first conceived as an amendment Bill. In its Sixth Assessment Report (AR6) Synthesis Report, the Intergovernmental Panel on Climate Change (IPCC) confirmed that human activities have unequivocally caused global warming of approximately 1.1°C above 1850–1900 levels; that global GHG emissions have continued to rise; and that limiting warming to 1.5°C requires deep, rapid and, in most cases, immediate GHG emission reductions in all sectors this decade. Critically for present purposes, the IPCC found that projected cumulative future CO_2 emissions over the lifetime of **existing** fossil fuel infrastructure, without additional abatement, already **exceed** the remaining carbon budget for limiting warming to 1.5°C.[4] It follows that the construction of **new** fossil fuel infrastructure of the kind the Gas Bill is designed to promote and facilitate is, on the IPCC's own findings, inconsistent with the 1.5°C limit unless that infrastructure is retired early or never fully utilised — which is precisely the definition of a stranded asset.

The International Energy Agency (IEA) has reached a similar conclusion. In the 2023 update to its Net Zero Roadmap, the IEA found that in its Net Zero Emissions by 2050 Scenario no new long lead-time upstream oil and gas projects are needed, nor are new coal mines, mine

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[2] 22 of 2024.
[3] 48 of 2001.
[4] IPCC, Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Summary for Policymakers, at A.1, A.2, B.5 and C.1 (Geneva, 2023). See in particular SPM B.5: projected CO2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C.

extensions or new unabated coal plants. On that pathway global natural gas demand falls from approximately 4 150 billion cubic metres (bcm) in 2022 to 3 400 bcm in 2030 and 900 bcm in 2050 — a contraction of some 78 per cent over the period.[5] New liquefaction, re-gasification, transmission and storage infrastructure approved now would be commissioned into a global market that, on the IEA's own net zero pathway, contracts sharply across the whole of that infrastructure's design life.

At the political level, the first Global Stocktake under the Paris Agreement called on Parties to contribute to global efforts of, among other things, transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade. The United Nations Secretary-General's Acceleration Agenda (March 2023) called on States, in terms, to cease all licensing or funding of new oil and gas projects, consistent with the findings of the IEA, and to stop any expansion of existing oil and gas reserves.[6] The World Economic Forum's Global Risks Report has, for several successive editions, ranked extreme weather events and failure of climate change mitigation and adaptation among the most severe global risks over a ten-year horizon.[7]

The Green Connection submits that this body of material bears directly on the rationality and reasonableness of promoting, through primary legislation and at public expense and public risk, the accelerated build-out of fossil gas facilities, infrastructure, services, investment and trade.

The Green Connection recommends that:

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[5] International Energy Agency, Net Zero Roadmap: A Global Pathway to Keep the 1.5 °C Goal in Reach – 2023 Update, Executive Summary (September 2023), available at https://www.iea.org/reports/net-zero-roadmap-a-global-pathway-to-keep-the-15-c-goal-in-reach. The Green Connection notes that the 2023 Update refined the formulation in the IEA's original 2021 Net Zero by 2050 report, which stated that no investment in new fossil fuel supply was required on its net zero pathway.

[6] United Nations Secretary-General, Acceleration Agenda, presented on 20 March 2023 on the release of the IPCC AR6 Synthesis Report. See also the Secretary-General's remarks of 15 June 2023: 'The problem is not simply fossil fuel emissions. It's fossil fuels – period.'

[7] World Economic Forum, Global Risks Report 2024 (19th ed., January 2024), which ranked extreme weather as the most severe risk over a ten-year horizon, with four of the top ten ten-year risks being environmental.

(a) The Preamble to the Gas Bill be amended to record the climate crisis, the State's obligations under the Climate Change Act and the Republic's commitments under the Paris Agreement, and the just transition to a low-carbon economy and society.

(b) A clause be inserted, in terms equivalent to clause 34(1) and (2) in respect of the NEMA section 2 principles, providing that the principles and objects of the Climate Change Act serve as guidelines for the interpretation, administration and implementation of the Act, and that they apply to all decisions and actions taken under the Act — including all determinations, regulations, rules, licensing and registration decisions and exemptions.

Liquefied Natural Gas

The Department of Electricity and Energy has framed LNG as a bridging fuel and an energy security solution. The Minister of Mineral and Petroleum Resources has described a two-pronged strategy — immediate LNG imports and accelerated domestic development — to address the anticipated decline of Mozambique's Pande and Temane gas fields.[8] The Department's briefing to this Committee on 6 May 2026 emphasised that the Bill is intended to create a predictable, investor-friendly regulatory environment and that gas-to-power will play a critical role in replacing coal-based capacity.[9]

The Green Connection submits that the Department's framing of LNG as a bridging or transition fuel is flawed, for four reasons:

First, the emissions profile of LNG is materially worse than that of pipeline gas,[10] and is systematically understated by reference to combustion emissions alone. Greenhouse gases are emitted at every stage of the LNG value chain: during upstream extraction and processing (including venting, flaring and fugitive releases); during liquefaction, which is highly energy-

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[8] https://www.sanews.gov.za/south-africa/natural-gas-development-critical-african-transition?utm_source=copilot.com

[9] https://www.parliament.gov.za/index.php/press-releases/media-statement-committee-electricity-and-energy-briefed-gas-bill?utm_source=copilot.com

[10] 'Pipeline gas' as used here refers to natural gas (predominantly methane) transported in its gaseous state through transmission pipelines directly to end users — in South Africa's case, currently supplied from the Pande and Temane fields in Mozambique via the Rompco pipeline. It is distinct from liquefied natural gas (LNG), which is natural gas that has been super-cooled to approximately -162°C to reduce it to liquid form for transport by tanker ship, and which must be re-gasified at the destination before use. The additional steps of liquefaction, shipping and re-gasification each generate greenhouse gas emissions not present in pipeline gas delivery, and each stage introduces opportunities for fugitive methane release.

intensive; during shipping, including boil-off gas and tanker propulsion; during re-gasification; and during onward transmission, storage and distribution, at each stage of which methane may leak. Fossil methane is a potent short-lived climate forcer: the IPCC's AR6 Working Group I report assigns it a global warming potential 82.5 times that of CO_2 over a 20-year period and 29.8 times that of CO_2 over a 100-year period.[11] The consequence is that comparatively small leakage rates are sufficient to erode, and on some analyses to eliminate, any claimed climate advantage over coal. Peer-reviewed research published in 2024 concluded that, once upstream and midstream methane emissions are properly accounted for on a 20-year basis, the lifecycle greenhouse gas footprint of exported LNG may exceed that of coal.[12]

Second, the Gas Bill contains no mechanism whatsoever for measuring, reporting, verifying or limiting methane emissions. There is no licence condition directed at fugitive emissions, no reporting obligation in respect of methane, no leak detection and repair requirement, and no definition of 'greenhouse gas' or 'methane' in clause 1. The word 'methane' appears in the Bill only within the definition of 'gas' in clause 1, as a description of a commodity to be traded. While establishing a national regulatory framework for an LNG-based gas industry, the Gas Bill remains silent on the single largest non-CO_2 climate risk that industry presents.

Third, the asset lifetimes contemplated by the Bill are irreconcilable with the Republic's 2050 net zero commitment**.** Clause 19(1)(a) permits an operating, service or trading licence to be issued for a period of up to 25 years, expressly 'taking into consideration … the time required to achieve a return on investment', and clause 19(2) and (3) permit renewal. Clause 17 permits a distributor to be granted exclusivity for a specified period, and clause 17(2)(b) requires the Energy Regulator, in deciding exclusivity, to consider 'the time required to recover this investment and to make a profit commensurate with the associated risk'. Clause 28(8) obliges the Energy Regulator to allow a licensee bound by a ministerial determination to recover its prudently and reasonably incurred costs. Taken together, these provisions build

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[11] IPCC, AR6 Working Group I, The Physical Science Basis, Chapter 7, Table 7.15 at p 1017.
[12] R W Howarth 'The greenhouse gas footprint of liquefied natural gas (LNG) exported from the United States' (2024) Energy Science & Engineering. The Green Connection notes that this finding is contested in the literature. The material point for present purposes is not that the debate is settled, but that the 'cleaner than coal' premise on which the Bill proceeds is wholly dependent on methane leakage assumptions that are neither stated nor verified anywhere in the Bill or its supporting documentation.

a statutory expectation of full cost recovery over a multi-decade horizon into infrastructure that the Republic has committed to operating in a net zero economy by 2050. For example, a licence issued in 2029 for the maximum permitted term would run to 2054.

Fourth, the ‘gas cliff’ narrative does not justify the legislative architecture proposed. While the Green Connection does not dispute that the decline of the Pande and Temane fields presents a real supply problem for a defined set of large inland industrial gas users, it submits that: (a) the gas cliff is a concentrated industrial supply problem, not a household energy access problem; it should not be conflated with energy poverty or with the electricity supply crisis; (b) the decline of those fields has been foreseeable for well over a decade, and the Department’s own Socio-Economic Impact Assessment records that supply was expected to be constrained ‘from about 2025 onward’. Long-foreseen supply constraints do not constitute an ‘emergency’ within the meaning of clause 28(2)(b), and the Green Connection is concerned that the gas cliff narrative may be used to justify recourse to emergency determination powers and to truncated or absent public participation; and (c) responding to a time-limited industrial supply constraint by procuring imported LNG on long-term, take-or-pay terms, backed by State guarantees under clause 28(13), converts that constraint into a multi-decade national fiscal, price and emissions commitment borne by the public. The proportionate response is a managed transition for the affected industrial users — through electrification, energy efficiency, and alternative feedstocks — assessed transparently against its alternatives.

The Green Connection recommends that:

(a) The Bill should not proceed on an unstated and unverified assumption that gas, and LNG in particular, is a lower-emission fuel. If Parliament proceeds with the Bill, the objects in clause 2 should be amended to require that the development of the gas industry occur in a manner consistent with the national greenhouse gas emissions trajectory, sectoral emissions targets and carbon budgets under the Climate Change Act.

(b) Clause 18(1) should be amended to include, within the framework of licence conditions, mandatory measurement, reporting and verification of greenhouse gas emissions (including fugitive and vented methane), and mandatory leak detection and repair, in respect of all licensed facilities and activities.

(c) Clause 37 should be amended to require the Energy Regulator to make rules prescribing the methodology for the measurement, reporting and verification of greenhouse gas emissions by licensees and registrants.

(d) Clause 28(2)(b) should be amended to define 'emergency', and to provide expressly that a supply constraint that was reasonably foreseeable does not constitute an emergency for the purposes of that paragraph.

The Gas Bill in the context of the Climate Crisis

As discussed in the preceding sections ('Gas Bill in Conflict with the Climate Crisis' and 'Liquefied Natural Gas' above), the Gas Bill contains no reference whatsoever to climate change. The Green Connection submits, for the reasons set out above, that the Bill is inconsistent with section 24 of the Constitution and has not been harmonised with the Climate Change Act as section 7(1) of that Act requires. Three specific developments in the legal landscape compound that concern.

First, the Gas Bill forms part of a broader legislative architecture for expanding fossil fuel development that includes the Upstream Petroleum Resources Development Act (UPRDA, assented to October 2024 but not yet in operation) and the South African National Petroleum Company Bill (SANPC Bill, currently before Parliament). Neither of those instruments contains any climate change provision. The Green Connection has commented on both.

Second, the Climate Change Act came into operation in material part on 17 March 2025. Section 7(1) of that Act imposes a binding obligation on every organ of state to review and, if necessary, harmonise its policies, laws and decisions with the Act. The Gas Bill has manifestly not been harmonised: it makes no reference to the Climate Change Act, to the national greenhouse gas emissions trajectory[13], to sectoral emissions targets[14] or carbon budgets[15], or to the just transition. Decisions of the kinds for which the Gas Bill provides — clause 28(1) determinations,

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[13] Section 24. In terms of s 24(3), the latest updated Nationally Determined Contribution (NDC) serves as the trajectory until such time as the Minister publishes the National Greenhouse Gas Emissions Trajectory.

[14] Section 25. The commencement of section 25(4) has not yet been proclaimed.

[15] Section 27. The commencement of section 27 has not yet been proclaimed.

clause 29 integrated energy projects, licence grants, State guarantees under clause 28(13), and exemptions under clause 39 — are quintessentially 'decisions which may have a significant effect on the Republic's ability to mitigate' under section 3(e) of the Climate Change Act. The omission is a structural feature of a Bill drafted before the Act came into operation and never revisited.

Third, South Africa submitted its Second Nationally Determined Contribution in October 2025, committing to reduce annual GHG emissions to 320–380 Mt CO_2-eq by 2035 on a pathway consistent with net zero CO_2 by 2050. A Gas Bill whose express purpose is to promote and facilitate gas facilities, infrastructure, services, investment and trade is difficult to reconcile with that pathway, and exposes South Africa to carbon lock-in, gas price volatility, supply uncertainty and stranded asset risk.

The Green Connection is concerned that the Gas Bill writes the pursuit of LNG liquefaction, re-gasification and gas transmission directly into the architecture of the Act — in clause 1 definitions, in the objects clause (clause 2(a), (b), (e) and (g)), and in clause 28(10) which makes a ministerial determination the gateway for all new transmission and re-gasification capacity. This entrenches, at the level of primary legislation, a policy commitment to an LNG market that does not yet exist, without any assessment of the GHG, methane leakage, price or lock-in implications. A statute which nowhere requires that assessment builds that vulnerability into every decision taken under it.

The Green Connection recommends that:

(a) The Gas Bill be reviewed, revised and harmonised with the Climate Change Act as section 7(1) of that Act requires, before it is proceeded with further.

(b) The long title and Preamble be amended to record that the Act is to be administered in a manner consistent with the Republic's obligations under the Climate Change Act and the Paris Agreement.

(c) Clause 2 be amended to include, as an object of the Act, the promotion of a just transition to a climate-resilient, equitable and internationally competitive low-carbon economy and society.

(d) A clause be inserted requiring the Minister and the Energy Regulator, in exercising any power or performing any function under the Act, to consider the national greenhouse gas emissions trajectory, any applicable sectoral emissions target and any applicable carbon budget, and to record that consideration in writing.

'Energy Security' properly understood

The Gas Bill's Memorandum on Objects indicates that '[t]here is a need to ensure national energy security through the Bill'[16] and that the intention is 'to promote and facilitate integrated energy projects including the gas-to-power projects, ensuring the security of energy supply'.

The Green Connection submits that energy security is not self-evidently synonymous with expanded fossil gas (primarily LNG) facilities, infrastructure, services, investment and trade. Energy security is not an end divorced from the people it is meant to serve: it is inseparable from affordability, ecological sustainability, democratic accountability and the just transition away from fossil fuel dependency to which South Africa's own statutory and international framework is committed. An energy security concept that locks the country into volatile, import-exposed and capital-intensive LNG infrastructure – at the expense of least-cost, domestically abundant renewable alternatives – undermines rather than secures the energy future of ordinary South Africans. Nor would domestic LNG production insulate consumers from the volatility of global energy markets. LNG trades internationally at prices set by global supply and demand: domestic producers sell at (or close to) export-parity prices, and domestic buyers pay at (or close to) import-parity prices, both of which move with international benchmarks. Domestic production may alter who captures the resource rent, but it does not shield South African households and businesses from global price shocks. Renewable electricity, by contrast, is generated from domestic sunlight and wind at costs that are, once installed, largely independent of global fuel markets.

The Green Connection recommends that:

(a) The Gas Bill should not be proceeded with in its current form.

(b) If Parliament nonetheless proceeds with the Gas Bill, it must at minimum be harmonised with the Climate Change Act, including by inserting into the Preamble an

[16] Memorandum on Objects, item 3.2.1.

acknowledgement of the climate crisis and of the State's domestic and international climate change obligations; and rebalancing the objects of the Bill and functions of the Energy Regulator towards the just transition.

(c) The Gas Bill define or qualify 'energy security' by express reference to affordability, ecological sustainability and the just transition.

3. Inadequacy of the Socio-Economic Impact Assessment

Every Bill submitted to Cabinet must be accompanied by a Socio-Economic Impact Assessment System (SEIAS) report. The SEIAS process exists to ensure that the socio-economic costs, risks and distributional consequences of proposed legislation are identified and weighed before Parliament is asked to legislate. The Green Connection has considered the Final SEIAS Report prepared by the Department,[17] and submits that it is materially deficient and cannot support the Bill now before the Committee.

The SEIAS Report does not assess this Bill

The SEIAS Report is dated 3 February 2025. It is titled, and throughout describes itself as assessing, the 'Gas Amendment Bill' — and, in its Communication Plan, the 'Gas Amendment Bill, 2024'. It records the objective of that proposal as being 'to amend the Gas Act, 2001'. It analyses provisions by reference to the amendment Bill's numbering — sections 15B, 21A, 22A, 22B, 23A, 24(4), 25A, 26(10), 28A, 29A, 31, 34A and 34B — none of which corresponds to the clause numbering of the Bill now before the Committee. The Bill before the Committee does not amend the Gas Act: clause 40(1) **repeals** it in its entirety and substitutes a new Act.

The Green Connection submits that the difference between amending an Act and repealing and replacing it is not formal. As set out in the section below, the repeal carries consequences for the survival of the entire body of subordinate legislation made under the Gas Act, which the Bill nowhere addresses — the Piped Gas Regulations, 2007 and the Gas Act Rules, 2021 — which are the instruments that currently contain the substantive protections for affected persons and communities. Those consequences are nowhere identified, let alone assessed, in

[17] Socio-Economic Impact Assessment System (SEIAS) Revised (2025): Final Impact Assessment Template – Phase 2, Name of the Proposal: Gas Amendment Bill (GAB), dated 3 February 2025, prepared by the Gas Policy unit of the Department of Mineral Resources and Energy (the SEIAS Report).

the SEIAS Report. On the face of it, no socio-economic impact assessment has been conducted on the Bill as introduced.

Two further indicators point the same way. The SEIAS Report identifies the linked expropriation legislation as 'The Land Expropriation Act No. 63 of 1975' — an Act repealed by the Expropriation Act[18], which is the very Act on which clause 33 of the Bill is predicated. And the SEIAS template on which the Report is prepared records that '[s]ign off forms are only valid for a period of six months'. The Report is dated 3 February 2025; the explanatory summary of the Bill and the prior notice of its introduction to the National Assembly was published in the Gazette on 24 February 2026.[19] More than twelve months elapsed between the two.

The SEIAS Report predates the relevant climate law

The SEIAS Report was completed on 3 February 2025. The Climate Change Act came into operation, in material part, on 17 March 2025. The Republic submitted its Second Nationally Determined Contribution in October 2025. It follows that no assessment of the Bill against the section 7(1) harmonisation obligation, the national greenhouse gas emissions trajectory, sectoral emissions targets, carbon budgets or the 2035 NDC target range was, or could have been, undertaken. The Green Connection submits that the Committee is accordingly being asked to consider legislation promoting the expansion of a fossil fuel industry without any socio-economic assessment of that expansion against the statutory climate framework now in force.

The climate concern was raised, recorded as accommodated, and not accommodated

The SEIAS Report contains a table of stakeholders consulted outside government. The first entry under 'Public' records that the benefit sought was that '[t]he Bill must ensure that gas activities are done in an environmental responsible manner'; that the public **opposed** the proposal; and that the amendment proposed was 'that the Bill makes provision for gas activities to be done in an environmentally responsible manner to ensure consistency with

[18] Act 13 of 2024.
[19] Government Gazette No. 54206 of 24 February 2026, as recorded on the cover page of the Bill.

international climate change commitments'. In the column headed 'Have these amendments been incorporated in your proposal? If yes, under which section?', the Department answered: 'Yes, section 2(c)'.

Clause 2(c) of the Bill provides for the promotion of competitive and sustainable trade in gas. It makes no reference to environmental responsibility, to climate change, or to consistency with the Republic's international climate change commitments, which is what the public concern was directed at. The Green Connection submits that the amendment recorded as having been incorporated was not incorporated, and that the SEIAS Report accordingly records as accommodated a concern which the Bill does not address. Whether or not that was intended, the effect is that the Committee is presented with a consultation record which overstates the extent to which the proposal was adjusted in response to public comment.

Climate obligations are framed as an obstacle rather than a constraint

Under the heading 'External conditions' in its Theory of Change, the SEIAS Report records that '[g]lobal calls for urgent transition from fossil fuels including gas may discourage investment and sabotage our efforts to expand the gas market', and that '[t]he lobby groups are pushing against policies relating to hydrocarbons and their development'. The stated mitigation is that the Bill enables gas infrastructure to be repurposed for green hydrogen.

The Green Connection submits that this passage is revealing of the premise on which the Bill proceeds. The Republic's own binding commitments under the Paris Agreement and the Climate Change Act are characterised not as legal obligations with which the proposal must be harmonised, but as external conditions that may 'sabotage' the departmental objective of expanding the gas market. Civil society organisations exercising constitutional rights of participation are characterised as 'lobby groups'. As to the hydrogen repurposing answer, the Bill contains no provision requiring, incentivising or even contemplating the repurposing of any facility; the only textual hook is the discretionary power in the definition of 'gas' in clause 1 for the Minister to prescribe low-carbon and renewable gases at some future date.

Material omissions from the assessment of costs and risks

The Green Connection submits that the SEIAS Report omits the socio-economic risks that matter most from a public interest perspective:

- **Gas price volatility.** The Report identifies the end-consumer as a cost bearer, noting only that '[t]he price of sourcing the gas plus tariffs is passed through to the end-consumer'. There is no assessment of exposure to international LNG price volatility, no quantification of the pass-through to electricity tariffs through gas-to-power, and no distributional analysis of the effect on low-income households. The Report asserts instead that regulation of tariffs will ensure gas services 'remain affordable', without addressing the fact that the Energy Regulator's tariff powers under clause 4 do not extend to the commodity cost of imported gas set on international markets.
- **Stranded asset risk.** The word 'stranded' appears in the Bill's Memorandum on Objects only as an argument **for** exclusivity in distribution areas. It does not appear in the SEIAS Report's risk register at all. There is no assessment of the risk that transmission, liquefaction or re-gasification infrastructure built with State guarantees under clause 28(13) becomes stranded before the end of its cost recovery period, nor of who bears that risk.
- **Greenhouse gas and methane emissions.** Methane is not assessed anywhere in the SEIAS Report. The Report's only quantified emissions claim — that cumulative emissions in scenarios with no additional gas are 400–600 Mt higher than in scenarios with additional gas supply — rests on a single industry-commissioned report published in 2022,[20] and is not tested against any alternative source. It is in any event difficult to reconcile with the Report's own statement, repeated twice, that '[s]wapping coal with gas keeps carbon emissions **flat**' — a concession that sits uneasily beside the Report's claim that the Bill will aid the 'reduction of carbon (CO2) emissions'.
- **The risk register assesses disputes, not impacts.** The risks identified in the Report are, without exception, risks of legal or administrative dispute: disputes about licence refusals, objections, determinations, exclusivity and price investigations. No environmental, climate, fiscal or distributional risk is identified.
- **Omission of the environmental legal framework.** The table of linked legislation lists the White Paper on Energy Policy, the National Energy Regulator Act, the Electricity

[20] National Business Initiative and Business Unity South Africa '*The role of gas in South Africa's path to net zero*', Chapter 3 (2022), cited in the SEIAS Report.

Regulation Act, the B-BBEE Act, the (repealed) 1975 Expropriation Act and the Competition Act. It does not list the National Environmental Management Act, the Climate Change Act, the Carbon Tax Act, the National Energy Act, the Mineral and Petroleum Resources Development Act or the Upstream Petroleum Resources Development Act. No environmental statute appears at all.

- **Omission of affected coastal communities.** Small-scale fishers, fishing-dependent communities and coastal communities are not identified anywhere in the SEIAS Report, whether as beneficiaries or as cost bearers. 'Local communities' appear only in the list of beneficiaries.

The Green Connection submits that the SEIAS process is the mechanism by which the executive is required to identify who bears the cost of proposed legislation. Where the assessment addresses a different instrument, predates the governing climate statute, records a public concern as accommodated when it was not, and omits price volatility, stranded assets, methane and the affected coastal communities entirely, the Committee does not have before it the information it needs to legislate.

The Green Connection recommends that:

(a) The Committee request the Department to prepare and table a fresh Socio-Economic Impact Assessment addressed to the Gas Bill [B6–2026] as introduced, and to make it available for public comment before the Bill is considered further.

(b) The fresh SEIAS expressly addresses: exposure to international gas price volatility and its pass-through to electricity tariffs and to low-income households; stranded asset risk and the allocation of that risk between the fiscus, licensees and consumers; lifecycle greenhouse gas emissions including fugitive and vented methane; the consequences of the repeal of the Gas Act for the subordinate legislation made under it; and the impacts on small-scale fishers, fishing-dependent communities and coastal communities.

(c) The Committee request an explanation from the Department of the basis on which clause 2(c) was recorded in the SEIAS Report as having incorporated the public's proposed amendment concerning consistency with international climate change commitments.

4. Minister's Extended Powers

Compared against the existing Gas Act, the Gas Bill reveals a consistent pattern: the extension of the Minister's powers in relation to key decisions:

(a) Determination of activities that do not require gas licences;
(b) Determinations that new gas facilities, services or gas supply is required and must be established or acquired;
(c) Determinations that provide for the establishment of a strategic integrated energy project;
(d) Expropriation of land; and
(e) Identification and Issuing of Exemptions.

Clause 11 – Activities no longer requiring licensing

Clause 11 provides that the Minister may, after consultation with the Energy Regulator, by regulation, 'determine <u>any activity contemplated in section 10(1)</u> as an activity that no longer requires a licence', from the date set out in such determination.

Given that such determinations are made 'by regulation', the Minister is required to invite public comment (and consider same) prior to determining activities that no longer require licensing (clause 36(1)(c) read with clause 36 (2)(b) and (c)).

Notwithstanding the public consultation requirement, the Green Connection is concerned that Clause 11 seeks to provide the Minister with overly wide powers without any constraints as to how this power should be exercised. The Memorandum on Objects of the Bill indicates that clause 11 is intended to eliminate red tape (revealing the intention behind the provision), but also includes the qualification that the Minister be empowered '*with tools to declare <u>certain activities</u> to be registrable activities in order to achieve security of supply when the need arises.'* Clause 11 reaches 'any activity contemplated in section 10(1)' — including the most significant activities that Parliament has seen fit to include in section 10(1). It is submitted that this sits in tension with the separation of powers doctrine and concentrates too much discretionary power in the Minister. The Green Connection notes further that a determination under clause 11 does not merely remove an activity from the licensing regime:

because clause 10(3) and Schedule 1 tie the registration obligation to specified items, and because clause 36(1)(c) and (d) treat de-licensing and registration as separate regulation-making powers, an activity de-licensed under clause 11 may fall out of the regulatory net altogether unless the Minister simultaneously prescribes it as a registrable activity under clause 23(3). The Memorandum on Objects assumes that de-licensing and registration will move together; the text of the Bill does not require it.

The Green Connection recommends that:

(a) Clause 11 be amended to specify the threshold criteria for the exercise of the power, including that the Minister must be satisfied that the activity concerned presents no material risk to public health, safety or the environment and that adequate regulatory oversight will continue to apply.

(b) Clause 11 be amended to exclude from its reach the construction and operation of gas transmission, liquefaction and re-gasification facilities, which are the activities of greatest environmental and public interest significance.

(c) Clause 11 be amended to provide that an activity determined as no longer requiring a licence must simultaneously be prescribed as a registrable activity in terms of clause 23(3), so that no activity contemplated in clause 10(1) falls outside both regimes.

Clause 28 – New gas facilities, services or gas supplies

Clause 28(1) empowers the Minister, by Notice in the Gazette, to determine that new gas facilities, services or gas supply are required and must be established or acquired. Determinations may be made to ensure security of energy supply or in an emergency (clause 28(2)), and are made after consultation with — but without the concurrence of — the Energy Regulator and the Minister of Finance (clause 28(3)). The Energy Regulator and any organ of state identified as buyer or procurer are bound by the determination (clauses 28(6) and (7)), and the Energy Regulator must allow a bound licensee to recover its prudently and reasonably incurred costs (clause 28(8)). Clause 28(10) prohibits the construction or operation of new transmission or re-gasification facilities above prescribed thresholds without either a ministerial determination or a ministerial exemption under clause 39. Clause 28(13) empowers the Minister, subject to the PFMA, to issue any guarantee, indemnity or security or enter into any other transaction that binds the State to any future financial commitment necessary ‘or expedient' for a publicly owned gas facility. Clause 28(14) confers wide procurement and contracting powers on the Director-General, including a broad delegation power.

The Green Connection has the following main concerns relating to clause 28:

First, the Minister's power to make s 28(1) determinations is not constrained by a requirement to make the determination 'in consultation with' the Energy Regulator and the Minister of Finance. This means that their concurrence is not required, and that the Minister is merely required to seek and consider their views.[21]

Second, no provision is made for notification of any proposed determination, or for public consultation on any proposed determination.

Third, no provision is made for the Minister to have regard to the NET (or latest NDC pending publication of the NET), SETs or Carbon budgets under the Climate Change Act.

Fourth, the Minister's power in clause 28(13) to issue 'any guarantee, indemnity or security or enter into any other transaction that binds the State to any future financial commitment that is necessary or expedient' is excessively wide and unconstrained, a particular concern given the price volatility of LNG and the risk of stranded assets. Also, expedience is not a reasonable justification for binding the State to 'any' guarantee, indemnity or security etc.

The Green Connection recommends that:

(a) Clause 28(1) of the Gas Bill be revised to require that the Minister makes any s 28(1) determination 'in consultation with' the Energy Regulator and the Minister of Finance (this would then in turn trigger the public consultation requirements that apply to any decisions made by the Energy Regulator — section 10 of the National Energy Regulator

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[21] *In Van Rooyen and Others v The State and Others* 2001 (9) BCLR 915 (T), the court explained that:
'The meaning of the phrases "in consultation with" and "after consultation with" are now well established.
"In consultation with" requires the concurrence of the other functionary (or person) and if a body of persons, that concurrence must be expressed in accordance with its own decision-making procedures. "After consultation with" requires that the decision be taken in good faith after consulting and giving serious consideration to the views of the other functionary (or person). In the former case the person making the decision cannot do so without the concurrence of the other functionary (or person). In the latter case he or she can'.
See also *MacDonald and others v Minister of Minerals and Energy and others* 2007 (5) SA 642 (C),
and *Freedom under Law v National Director of Public Prosecutions and others* [2013] 4 All SA 657 (GNP).

Act; **alternatively**, clause 28 be revised to require the Minister to provide: reasonable Notice of any proposed s28(1) determination, sufficient information to enable meaningful participation, and a reasonable opportunity for interested and affected parties, and the public, to make representations to the Minister.

(b) Clause 28(1) of the Gas Bill be revised by adding the words 'and in a manner consistent with the principle of ecologically sustainable development and South Africa's climate change obligations' after 'gas master plan'.

(c) Clause 28(2) of the Gas Bill be revised to provide that the Minister may make a s 28(1) determination 'subject to confirmation that the proposed new gas facilities, services or gas is consistent with the National Greenhouse Gas Emissions Trajectory and any Sectoral Emissions Targets or Carbon budgets as may be applicable under the Climate Change Act.

(d) Clause 28(13) be amended to require the concurrence of the Minister of Finance prior to the Minister issuing any guarantee, indemnity or security etc. that binds the State to future financial commitment, and by removal of the words 'or expedient'.

(e) Clause 28 be amended to require the Minister, before making a determination, to publish the proposed determination in the Gazette together with the reasons for it and the information relied upon, and to afford interested and affected parties and the public a reasonable period to make representations, which the Minister must consider.

(f) Clause 28 be amended to require the Minister to publish, with any determination, an assessment of its implications for the national greenhouse gas emissions trajectory, the relevant sectoral emissions targets and the Republic's Nationally Determined Contribution.

(g) Clause 28(13) be amended to require that any guarantee, indemnity or security contemplated in that subsection be tabled in the National Assembly, together with a statement of the contingent liability assumed by the State and an assessment of stranded asset risk, before it is issued.

(h) Clause 28(8) be amended so that the obligation on the Energy Regulator to allow recovery of costs associated with the implementation of a determination applies only to costs that are prudently and reasonably incurred **and** that remain consistent with the objects of the Act as amended, and so that the Energy Regulator is not obliged to permit recovery of costs of infrastructure rendered redundant by a change in policy or law relating to climate change.

(i) Clause 28(14)(b) be amended to preclude the delegation of the Director-General's powers in respect of procurement processes exceeding a prescribed value, and to require that any delegation be published.

Clause 33 - Expropriation of Land

Clause 33 of the Gas Bill empowers the Minister, in consultation with the Minister responsible for the administration of the Expropriation Act, 2024 (Act No. 13 of 2024), to expropriate land or any right in, over or in respect of land, for any gas facilities **for a public purpose or in the interest of the public**, in terms of section 25 of the Constitution and the Expropriation Act.

The terms 'public purpose' and 'interest of the public' are not defined in the Bill. This power is constrained only by the requirement that the exercise of the power be done with the concurrence of the Minister responsible for the administration of the Expropriation Act[22], and in accordance with section 25 of the Constitution and the Expropriation Act.[23] Section 25(2) of the Constitution provides that property may be expropriated only in terms of a law of general application: (a) for a public purpose[24] or in the public interest; and (b) subject to compensation (as agreed by those affected or decided or approved by a court). In contrast, the Expropriation Act identifies certain instances where 'nil compensation' may be 'just and equitable'.[25] It is understood that the constitutionality of these 'nil compensation' provisions is currently being challenged.

It is also noted that the Memorandum on Objects of the Gas Bill notes in relation to the Parliamentary Procedure (item 6.6) that the State Law Advisers were of the opinion that it is

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[22] The Minister responsible for Public Works and Infrastructure.

[23] 13 of 2024. The Expropriation Act defines ''public interest'' as including the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources in order to redress the results of past racial discriminatory laws or practices; while ''public purpose'' is defined as including any purposes connected to the administration of any law by an organ of state, in terms of which the property concerned will be used by or for the benefit of the public.

[24] Section 25(4)(a) provides that for this purposes of section 25 the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources.

[25] Section 12(3) of the Expropriation Act, 2024.

necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act[26], since the Bill deals with the expropriation of land and may impact land belonging to traditional communities. As such, the Department was of the view that the Bill pertains to customary law or the customs of traditional or Khoi-San communities as envisaged in section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act.

Under section 32 of the Gas Act, the expropriation power was vested in the Gas Regulator (not the Minister), exercisable only on a licensee's request, only where land was 'reasonably required' and could not be acquired by agreement, and subject to a prescribed procedure under the Piped Gas Regulations, 2007 that required a public hearing, a mandatory compensation recommendation, and a court right for any dissatisfied party. Clause 33 transfers the power to the Minister, who may initiate expropriation at his own instance, for any gas facility, without those procedural constraints.

The Green Connection raises four further concerns in relation to clause 33:

First, the purposes for which land may be expropriated are unconstrained by the objects of the Act. Section 32(1) of the Gas Act permitted expropriation only '[i]n pursuit of the objects of this Act', on behalf of a licensee, and only for specified facility types. Clause 33 of the Gas Bill permits expropriation 'for any gas facilities' — a term defined in clause 1 by reference to 'all the necessary and incidental infrastructure associated with the activities referred to in section 10'. The combination of 'any' and 'incidental' is capable of reaching very widely, and the clause contains no requirement that the land be reasonably required, that voluntary acquisition first have been attempted, or that the facility enhance the Republic's gas infrastructure.

Second, expropriation may now be exercised in support of purely private commercial interests, on the Minister's own initiative. Under the Gas Act the power was triggered by a licensee's request and exercised by an independent regulator applying prescribed criteria at

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[26] Act No. 3 of 2019.

a public hearing. Under clause 33 the Minister may initiate expropriation without any request, and clause 28(4)(b) expressly contemplates that the person who constructs, manages, maintains or operates a determined facility may be a private sector party. Expropriation for 'a public purpose or in the interest of the public' in order to transfer land to a private commercial operator is questionable, and should be expressly addressed by Parliament.

Third, no compensation procedure is provided. Section 25(2)(b) of the Constitution requires that expropriation be subject to compensation, the amount, timing and manner of payment of which have either been agreed or been decided or approved by a court. Regulation 10(6) and (9) of the Piped Gas Regulations, 2007 presently give effect to this by requiring every expropriation award to be accompanied by a recommendation as to compensation and by preserving the right of a dissatisfied party to approach a court. The Bill contains no equivalent, and — as set out above — clause 36(1) does not even confer a power to prescribe one.

Fourth, and of particular concern to the communities the Green Connection supports, no provision is made for consultation with holders of informal, customary or unregistered rights in land. The State Law Advisers have themselves concluded that the Bill deals with the expropriation of land and may impact land belonging to traditional communities, and that it pertains to customary law or the customs of traditional or Khoi-San communities. Such rights are protected under the Interim Protection of Informal Land Rights Act, 31 of 1996.[27] Clause 33 makes no reference to that Act, to informal rights holders, or to any obligation to consult affected communities before an expropriation decision is taken.

The Green Connection notes further that the Expropriation Act identifies circumstances in which 'nil compensation' may be just and equitable in respect of land, and that the constitutionality of those provisions is understood to be the subject of challenge. While those provisions are directed principally at abandoned, unused and speculatively held land, the Green Connection is concerned that communities holding land under customary or informal tenure, without registered title and without records of productive investment, may be

[27] See in this regard *Maledu and Others v Itereleng Bakgatla Mineral Resources (Pty) Limited and Another* [2018] ZACC 41; 2019 (2) SA 1 (CC), in which the Constitutional Court confirmed that holders of informal rights in land may not be deprived of those rights without their consent, save in accordance with the Interim Protection of Informal Land Rights Act.

exposed to arguments of that kind. It submits that the Bill should place the position beyond doubt.

The Green Connection recommends that:

(a) Clause 33 be amended to require that, before any expropriation decision is taken, notice be given and a public hearing be held in the area concerned, on terms at least equivalent to regulation 10(4) of the Piped Gas Regulations, 2007.

(b) Clause 33 be amended to require that any expropriation decision be accompanied by a recommendation as to compensation, and to record the right of any affected party who does not accept that recommendation to approach a court to determine the amount and the time and manner of payment of compensation.

(c) Clause 33 be amended to provide expressly that the power may not be exercised in respect of land in which any person holds an informal right to land as defined in the Interim Protection of Informal Land Rights Act, 1996, otherwise than in accordance with that Act; and that affected communities, including small-scale fishing communities and Khoi-San communities, must be consulted before any decision is taken.

(d) Clause 33 be amended to require the concurrence of the Minister responsible for land reform and rural development, in addition to that of the Minister responsible for the administration of the Expropriation Act, where the land concerned is subject to customary or informal rights.

Clause 39 - Exemptions

Clause 39 of the Gas Bill empowers the Minister, in consultation with (i.e. with the concurrence of) the Energy Regulator and any other relevant Minister, by notice in the Gazette, to identify activities or classes of activities that may be exempted from compliance with this Act, if it is likely to:

(a) safeguard the national security of the Republic;

(b) promote the national, strategic or economic interests of the Republic; or

(c) discharge an international obligation of the Republic.

The Minister is further empowered to issue such an exemption on such terms and conditions as may be appropriate, having regard to the circumstances which give rise to the need to issue the exemption and also taking into account the objects of the Bill.

In contrast, Schedule 1 to the Gas Act itself specified exemptions from the obligation to apply for and hold a license, namely:

- Any person engaged in the transmission of gas for that person's exclusive use.
- Small biogas projects in rural communities not connected to the national gas pipeline grid.
- Gas reticulation and any trading activity incidental thereto.
- Liquefied petroleum gas supplied from a bulk storage tank or cylinder, piped at less than 2 bar gauge and crossing no more than four erf lines between separate property boundaries.

The Green Connection is concerned that the power in clause 39 is overly broad and concentrates in the Minister a function previously exercised by Parliament through the legislative process.

Under the Gas Act, the categories of activity exempt from the licensing obligation were fixed by Parliament in Schedule 1 and could be altered only by amending the Act. Clause 39 transfers that function to the Minister, and does so in materially wider terms: the exemption is not confined to the licensing obligation but extends to exemption 'from compliance with this Act' in its entirety. On its plain wording an exemption under clause 39 could relieve a person of the obligation to hold a licence at all, of the licence conditions contemplated in clause 18 (including the condition in clause 18(1)(w) that construction and operation not be inconsistent with section 24(2) of NEMA, and the decommissioning and rehabilitation condition in clause 18(1)(o)), of the third party access obligations, of the non-discrimination obligation in clause 30, and of the environmental and rehabilitation obligations in clause 34.

The grounds are broad and, in one respect, circular. '[P]romote the national, strategic or economic interests of the Republic' is capable of describing almost any gas project that the Department wishes to see proceed — and, given that clause 2 makes the promotion and facilitation of gas facilities, investment and trade objects of the Act, an exemption from the

Act could be justified by reference to the very interests the Act advances. The clause contains no requirement of proportionality, no maximum duration, no requirement that the exemption be the least restrictive means available, no requirement of public consultation, and no reporting obligation to Parliament.

The practical significance is heightened by clause 28(10), which prohibits the construction or operation of a new transmission or re-gasification facility, or its expansion beyond the prescribed thresholds, without either a ministerial determination or a ministerial exemption issued in terms of clause 39. The exemption power is therefore an alternative route to authorising precisely the large-scale LNG import infrastructure with which these comments are principally concerned, and it is a route that involves no public participation whatsoever.

The Green Connection recommends that:

(a) Clause 39 be amended to confine the exemption power to exemption from specified provisions of the Act, and to provide expressly that no exemption may be granted from clause 30 (non-discrimination), clause 34 (environment and rehabilitation), or the licence conditions contemplated in clause 18(1)(o) and (w).

(b) Clause 39 be amended to require the Minister, before identifying activities or classes of activities that may be exempted, to publish the proposal in the Gazette and to invite and consider public comment, on terms equivalent to clause 36(2).

(c) Clause 39 be amended to require that every exemption specify the period for which it is granted, which may not exceed a prescribed maximum, and that the Minister publish the exemption together with the reasons for it.

(d) Clause 39 be amended to require the Minister to table in the National Assembly, annually, a report of all exemptions identified and issued during the preceding year and the reasons for them.

(e) Clause 28(10) be amended to remove the reference to a ministerial exemption issued in terms of clause 39, so that a new transmission or re-gasification facility may not be constructed or operated otherwise than pursuant to a determination made after public consultation.

5. Repeal of the Gas Act without Saving the Regulations and Rules

The Green Connection raises what it submits is a consequential omission in the Bill, and one which bears directly on several of the sections that follow.

Clause 40(1) provides simply that '[t]he Gas Act, 2001 (Act No. 48 of 2001), is hereby repealed'. Clause 40(2) provides that anything done by the Energy Regulator in terms of the Gas Act prior to commencement, and which may validly be done by the Energy Regulator, is deemed to have been done in terms of the new Act. Clause 40(3) provides that any licence issued under the Gas Act remains valid for its term. That is the whole of the savings provision.

Nothing in clause 40 saves the subordinate legislation made under the Gas Act. Section 12(2) of the Interpretation Act, 1957 provides that, unless the contrary intention appears, the repeal of a law shall not affect the previous operation of the law so repealed or anything duly done or suffered under it, nor any right, privilege, obligation or liability acquired, accrued or incurred under it.[28] On one view, the making of regulations and rules is something duly done under the Gas Act, with the consequence that those instruments continue in operation after the repeal until they are themselves repealed or replaced. On the competing view, reflected in the principle that delegated legislation derives its force from its empowering provision, subordinate legislation cannot survive the repeal of the empowering statute in the absence of an express saving. The Green Connection does not ask the Committee to resolve that question. Its submission is that the point is genuinely open; that a matter of this significance should not be left to be settled by litigation after commencement, at the expense of the persons who rely on the instruments in question; and that the Bill's own approach in clause 40(2) and (3), which expressly saves acts of the Energy Regulator and existing licences, indicates that the drafters did not regard section 12(2) as sufficient for that purpose.

Two instruments are affected:

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[28] Section 12(2)(b) of the Interpretation Act 33 of 1957 provides that, unless the contrary intention appears, a repeal shall not affect the previous operation of the law so repealed or anything duly done or suffered under it; section 12(2)(c) preserves rights, privileges, obligations and liabilities acquired, accrued or incurred under the repealed law. Whether the making of regulations and rules is 'anything duly done' for this purpose, such that subordinate legislation continues in operation after the repeal of its empowering statute, is not settled, and the general principle that delegated legislation derives its force from its empowering provision points the other way. The Green Connection's submission does not depend on the resolution of that question.

- The Piped Gas Regulations, 2007,[29] made by the Minister under section 34(1) of the Gas Act. These are not saved by clause 40(2), which is confined in terms to things done by the Energy Regulator.
- The Gas Act Rules, 2021,[30] made by the Energy Regulator under section 34(3). Whether the making of rules constitutes something 'done by the Energy Regulator … which may validly be done by the Energy Regulator' within the meaning of clause 40(2) is, at best, uncertain. Legal certainty on a matter of this significance should not turn on the construction of an ambiguous deeming provision.

The significance of this is that the procedural and substantive protections on which affected persons and communities presently rely are contained not in the Gas Act but in these two instruments. If those instruments do not survive the repeal, their loss, without replacement, would remove:

- **Fair administrative action (regulation 12).** The Gas Regulator is **currently obliged,** where its administrative action may materially and adversely affect rights or legitimate expectations, to call for written representations, to give at least two weeks' notice, to give a clear statement of the intended administrative action, and to afford a reasonable opportunity to make representations. Rules 15 and 16 of the 2021 Rules supplement this with a PAJA-compliant framework, including a consultation period of at least 30 days for decisions materially affecting the public, and — importantly — the publication on the Energy Regulator's website of a non-confidential version of every such decision and the reasons for it. The Bill contains no equivalent, and clause 36(1)(a) makes the making of any replacement regulation discretionary ('may').
- **Expropriation procedure (regulation 10).** As set out in the section on clause 33 below, regulation 10 presently prescribes a detailed procedure: a request by the licensee, evidence of failed negotiation, a public hearing advertised at least two weeks in advance in a local newspaper, a mandatory recommendation as to compensation, and an express right for a dissatisfied party to approach a court on compensation. The Bill has

[29] GN R. 321 of 20 April 2007.
[30] GN 470 of 28 May 2021, made by the Energy Regulator in terms of section 34(3) of the Gas Act, 2001.

no equivalent and, unlike section 34(1)(g) of the Gas Act, clause 36(1) does not even include a power to prescribe expropriation procedures.

- **Decommissioning and rehabilitation (regulation 11).** As set out in Part B below, regulation 11 presently requires a closure plan six months in advance of termination, including an environmental impact assessment of the abandonment, and prohibits release of financial security until an independent consultant certifies rehabilitation. Clause 36(1)(f) makes the replacement discretionary.
- **Price regulation principles and price transparency (regulation 4).** Regulation 4 presently requires the Regulator, when approving maximum prices, to be objective, fair, non-discriminatory, transparent and predictable and to include efficiency incentives; requires approval of maximum prices for residential customers by distribution area; requires invoices to itemise the acquisition or production cost of gas and all tariff charges; and requires annual publication of aggregated prices by customer category on a provincial basis. None of this appears in the Bill. Clause 36(1)(k) makes the replacement discretionary and clause 37(i) leaves the tariff methodology to rules that the Energy Regulator 'may' make.
- **Publication of licence applications (rule 8).** Rule 8(3) of the 2021 Rules presently requires a notice of a licence application to be published in at least two newspapers circulating in the area of the proposed activity, in two official languages commonly spoken in that area, one of which must be English; and rule 8(6) requires the notice to state that the application is accessible to the public for 30 days, at specified offices and on specified websites. These requirements derive from section 17(1) of the Gas Act, which the Bill repeals. Clause 13(1) of the Bill leaves the manner and period of publication entirely to rules that may not exist.

The Green Connection submits that the Bill, if enacted in its present form, would place a body of binding protections in doubt and replace them with discretionary powers to remake them. Between commencement and the making of any new regulations and rules there may be a regulatory gap in which licence applications could be published in a manner of the Energy Regulator's choosing, expropriations could proceed without any prescribed hearing, and decommissioning could occur without any prescribed closure plan or financial provision.

This concern is of particular importance to the historically disadvantaged and vulnerable communities the Green Connection supports. The requirement of publication in two newspapers circulating in the area of the proposed activity, in two official languages commonly spoken in that area, is the practical mechanism by which rural, coastal and poor communities learn that a facility is proposed near them and that they have 30 days in which to object. Replacing a statutory minimum with an unconstrained discretion is, in that context, a material diminution of the right to procedurally fair administrative action and of the section 24 environmental right.

The Green Connection recommends that:

(a) Clause 40 be amended to place the position beyond doubt by providing expressly that any regulations made under section 34(1) of the Gas Act, 2001 and any rules made under section 34(3) of that Act, in force immediately before commencement, remain in force as if made under the corresponding provisions of this Act, until repealed or replaced by regulations or rules made under this Act.

(b) Alternatively, and in any event, the substantive protections presently contained in regulations 4, 10, 11 and 12 of the Piped Gas Regulations, 2007 and in rules 8, 15 and 16 of the Gas Act Rules, 2021 be incorporated into the Bill itself, so that they are not susceptible to removal by the exercise of a discretion.

(c) The word ‘may’ in clause 36(1) be replaced with ‘must’ in respect of paragraphs (a) (fair administrative action), (f) (decommissioning, rehabilitation and financial provision) and (k) (tariff and maximum price regulation), and a provision be inserted requiring those regulations to be made within a specified period after commencement.

(d) Clause 36(1) be amended to include a power to prescribe the procedure to be followed, and the time within which expropriation proceedings must be conducted, equivalent to section 34(1)(g) of the Gas Act, 2001; and clause 41 be amended so that the Act does not come into operation before those regulations are in force.

6. Procedurally Fair Administrative Action

The Gas Bill’s public participation framework has significant gaps. The Bill provides for publication of licence applications (clause 13), a 30-day objection period (clause 14), and public comment on ministerial regulations (clause 36), but falls materially short in the following respects:

- In terms of Clause 4 the making of rules for determining a tariff or maximum prices is left entirely to the discretion of the Energy Regulator, with no provision for public consultation.
- Clause 15 provides (among other things) that the Energy Regulator may request such additional information as may be necessary to consider a licence application properly, and that the licence applicant must provide the Energy Regulator with such additional information within the period determined by the Energy Regulator by rule. The clause also empowers the Minister 'from time to time" to identify and publish in the Gazette imperatives that must be considered by the Energy Regulator in the consideration of all licence applications contemplated in section 10. Clause 16 requires the Energy Regulator to decide the application within 60 days after (among other things) receiving the additional information requested in terms of clause 15. No provision is made for objectors to comment on this additional information. Where new information is introduced and not made available to objectors, this failure would render the objection process procedurally unfair and susceptible to constitutional challenge and/or would make any decision rejecting the objections susceptible to being set aside on review.[31] The concern is acute under clause 16(1)(c), which contemplates that additional information may be received after the objection period has closed and after the applicant has responded to objections, and which then requires the Energy Regulator to decide within 60 days without any provision for the objectors to be heard on that material.
- Clause 18 (3)(a) makes provision for a person aggrieved by a licence condition to apply to the Energy Regulator to have the condition reviewed. This right extends to non-licensees (clause 18(3)(b), in which case the Energy Regulator is required to inform the

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[31] In *Earthlife Africa* the Court held that where a final report placed new facts before the decision-maker which had not been addressed in the draft on which the objector had commented, the objector was entitled, as part of its right to procedural fairness, to a reasonable opportunity to make representations on the new material; the failure to afford that opportunity rendered the decision reviewable and it was set aside. See: Earthlife Africa (Cape Town) v Director-General: Department of Environmental Affairs and Tourism and Another (7653/03) [2005] ZAWCHC 7; 2005 (3) SA 156 (C); [2006] 2 All SA 44 (C) (26 January 2005) per Griesel J.

licensee of the application for review. However, no similar provision is made for objectors or the public to be informed of a licensee's application for a licence condition to be reviewed. No provision is made for objectors/the public or licensees to submit comments on any licence review application in terms of sub-clauses (a) and (b) respectively.

- Clause 19(2) makes provision for licence renewal. No provision is made for public consultation relating to such renewals.
- Clause 20(3) makes provision for a licensee to make representations regarding amendment of licence conditions, but fails to include a similar provision for objectors/the public to make representations.
- Clause 23 makes no provision for public consultation / representations on registration applications.

Procedurally fair administrative action is a constitutional right (s33 of the Constitution). Section 3 of the Promotion of Administrative Justice Act (PAJA) requires that administrative action which materially and adversely affects the rights or legitimate expectation of any person must be procedurally fair (and provides that in order to give effect to the right to procedurally fair administrative action such persons must be given adequate notice of the nature and purpose of the proposed administrative action, a reasonable opportunity to make representation, and a clear statement of the administrative action (i.e. adequate information to make meaningful representations). Section 4 of PAJA requires that in cases where an administrative action materially affects the rights of the public, an administrator, in order to give effect to the right to procedurally fair administrative action, must decide whether to hold a public inquiry, follow a notice and comment procedure, or both. Procedural fairness is also required under the Principle of Legality (relating to executive action).

While it is noted that clause 36(1)(a) provides that the Minister 'may' by Notice in the Gazette make regulations regarding ensuring fair administrative action by the Energy Regulator in accordance with the PAJA and any other applicable legislation, this power is discretionary. Additionally, this provision does not cater for fair administrative action by the Minister.

In contrast, Regulation 12 of the Piped Gas Regulations, 2007 obliges the Gas Regulator, in mandatory terms, to call for written representations before taking any administrative action that may materially affect rights or legitimate expectations, with at least two weeks' notice and a clear statement of the intended action. Rules 15 and 16 of the Gas Act Rules, 2021 supplement this with a minimum 30-day consultation period for decisions affecting the public and a requirement to publish a non-confidential version of the decision and the reasons for it. As set out in the section on clause 40 above, neither instrument is expressly saved by the Bill. The effect is that the continued operation of the only binding source of a general fair administrative action procedure in the gas regulatory framework is left in doubt, and that the Bill offers in its place only a discretionary power in clause 36(1)(a) to make regulations on the subject — a power which, on its terms, extends only to administrative action by the Energy Regulator and not to administrative or executive action by the Minister.

The Green Connection submits that the appropriate course is not to leave these protections to subordinate legislation at all. Where the exercise of a power materially and adversely affects rights, the Bill itself should say what fairness requires.

These concerns must be read together with clause 40 of the Gas Bill, dealing with the repeal of the Gas Act and savings, which is addressed in a separate section above.

A further concern, arising from the licensing framework in clause 10, is that the Bill places the Energy Regulator in a position of institutional conflict: it is statutorily directed to promote the industry it regulates, it is bound by ministerial determinations, and it must apply imperatives set by the Minister, while at the same time deciding licence applications that may be the subject of public objections. That concern, and the recommendation to which it gives rise, are set out in the section on Gas Licensing and Registration below.

Finally, the Bill creates a risk of regulatory downgrade without participation. Because clause 11 permits the Minister to move activities out of the licensing regime and clause 23(3) permits the Minister to bring activities into the registration regime, a significant activity could migrate from the fuller licensing framework — which includes environmental, decommissioning, tariff and third party access conditions — to the materially narrower registration framework in clause 24(1), without any public participation on the consequences of that migration for the conditions capable of being imposed. The Green Connection submits that clause 24(1) should be amended to permit the imposition of registration conditions relating to environmental management, greenhouse gas emissions reporting, and decommissioning and rehabilitation; and that any migration of a licensed activity to the registration regime should require prior public notification and comment.

The Green Connection recommends that:

(a) The Gas Bill includes a clause requiring that all exercises of power by the Minister and Energy Regulator must be procedurally fair and are subject to sections 3 and 4 of PAJA, as may be applicable.

(b) Clause 13(1) be amended to restore the statutory minimum presently contained in section 17(1) of the Gas Act, namely publication in at least two newspapers circulating in the area of the proposed activity, in any two official languages commonly spoken in that area, one of which must be English; and that provision be made for such additional means of notification as may be appropriate to reach affected rural and coastal communities.

(c) Clause 16 be amended to restore the obligation presently contained in section 19(3) of the Gas Act, namely that the Energy Regulator provide a copy of its decision together with the factors on which it was based; and to require that every objector be notified of the outcome and furnished with the reasons.

(d) A clause be inserted requiring the Energy Regulator to establish and maintain a publicly accessible register, on its website, of all licence applications, objections, licences and licence conditions, registrations and registration conditions, decisions and reasons, and to keep it updated.

(e) A provision equivalent to section 20 of the Gas Act, requiring the disposal of gas assets controlled by the State to be effected by an open and transparent bidding procedure, be inserted into the Bill.

(f) Clause 15(3) be amended so that the imperatives which the Energy Regulator must consider include consistency with the national greenhouse gas emissions trajectory, sectoral emissions targets and carbon budgets, and so that any imperatives are published in draft for public comment before being finalised.

7. Access to Information / Commercial Confidentiality

Clause 7 of the Gas Bill prohibits any information provided to the Energy Regulator in terms of this Act that is 'non-generic, confidential, personal, commercially sensitive or of a proprietary nature' from being made public except for the purposes of complying with or enforcing the provisions of the Bill, Promotion of Access to Information Act, 2000 (PAIA), Protection of Personal Information Act (POPI), any other law or in terms of an order of a High Court.

Clause 12(4) provides that the applicant may, in accordance with PAIA, request confidential treatment of commercially sensitive information contained in an application and subject to concurrence by the Energy Regulator, such information may be withheld from publicly available copies of the application

The Green Connection acknowledges that clause 7 is, in one respect, an improvement on section 29(4) of the Gas Act, which permitted disclosure only with the consent of the person to whom the information related or in terms of a High Court order. Clause 7(1) at least records that disclosure may occur for the purposes of complying with or enforcing PAIA, POPIA or any other law. The Green Connection also accepts that the mandatory public interest override in section 46 of PAIA applies to any refusal of access, whatever clause 7 provides.

The Green Connection's concern is that clause 7 and clause 12(4), operating together with the 30-day objection period in clause 14(1), make it practically impossible for an objector to obtain the information needed to object within the time allowed. The sequence is this: under clause 13(3) the applicant may not publish notice of the application until the Energy Regulator has decided the confidentiality request; the objector then has 30 days from publication in which to lodge an objection; and the material withheld will not be in the publicly available copy of the application. A PAIA request cannot realistically be made, decided, and if necessary appealed within that window.

Adequate information is an element of procedural fairness, not an optional extra. Section 3(2)(b)(ii) of PAJA requires that an affected person be given a reasonable opportunity to make representations, and section 3(2)(b)(iii) requires a clear statement of the administrative action; the courts have repeatedly held that a person cannot make meaningful representations without knowing the gist of the case to be answered. The right of access to information held by the State, and by another person where required for the exercise or protection of any right, is itself a constitutional right under section 32.

The Green Connection is further concerned that clause 12(4) requires only the 'concurrence' of the Energy Regulator, with no opportunity for any other person to be heard on the question, and no right of objection or appeal against the concurrence decision — notwithstanding that the decision determines what the public will be permitted to see. Certain categories of information should not be capable of being withheld at all — information concerning greenhouse gas emissions (including fugitive methane), pollution, environmental risk, safety, and the prices and tariffs payable by customers is information in which the public has an inherent interest, and its disclosure cannot properly be characterised as commercially sensitive in a manner outweighing that interest.

The Green Connection recommends that:

(a) Clause 7(1) be amended to provide that the prohibition applies only to information that may lawfully be refused under Chapter 4 of Part 2 of PAIA, and that it is in all cases subject to section 46 of PAIA.

(b) Clause 7 be amended to provide expressly that information relating to greenhouse gas emissions (including fugitive and vented methane), to emissions of other pollutants, to environmental or safety risk, and to the prices and tariffs charged to customers, may not be withheld from the public.

(c) Clause 12(4) be amended to require that a request for confidential treatment be published together with the applicant's reasons; that interested and affected parties be afforded an opportunity to make representations before the Energy Regulator decides whether to concur; and that the decision and reasons be published.

(d) Clause 14(1) be amended so that the 30-day objection period runs from the date on which the applicant makes available all information reasonably required to enable meaningful objection, and to empower the Energy Regulator to extend the period on good cause shown.

(e) A clause be inserted requiring all licences and licence conditions, registrations and registration conditions, determinations, exemptions and guarantees issued under the Act to be published on a publicly accessible website and kept updated.

8. Prices and Tariffs

The Green Connection's concerns relating to prices and tariffs are as follows.

- **The Energy Regulator's price powers do not reach the commodity cost of imported gas.** Clause 4(1) empowers the Energy Regulator to regulate tariffs and, where there is inadequate competition, maximum prices charged **by a licensee**. That is a power to regulate the domestic margin. It is not a power to regulate the landed cost of imported LNG, which is set on international markets. Clauses 4(3)(a) and (b) and 4(4)(a) in fact **require** the regulated tariff and maximum price to enable the licensee to recover its investment and its prudently and efficiently incurred costs, and clause 28(8) requires the Energy Regulator to allow recovery of costs associated with implementing a ministerial determination. The statutory architecture is therefore one of cost pass-through. The Department's assurance, recorded in the SEIAS Report, that the Energy Regulator's new powers will ensure that gas services 'remain affordable … particularly [for] those from disadvantaged households' cannot be sustained in respect of the commodity cost.
- **International gas prices are demonstrably volatile.** Following the 2021–2022 energy crisis, spot prices for LNG in the European and Asian markets rose by an order of magnitude within months before falling again. A country dependent on imported LNG for gas-to-power generation imports that volatility directly into its electricity price. Because the Bill's stated purpose includes facilitating gas-to-power projects (clause 2(f)), the exposure is not confined to gas customers: it is transmitted to every electricity consumer, including the low-income households for whom electricity is already a significant proportion of household expenditure.
- **The Bill removes the existing price transparency protections and does not replace them.** Regulation 4 of the Piped Gas Regulations, 2007 presently requires the Regulator to approve maximum prices for residential customers by distribution area; requires invoices to itemise the acquisition or production cost of the gas and all tariff charges;

requires trading licensees to report annual volumes and average prices; and requires publication of aggregated prices by customer category on a provincial basis. As set out above, the survival of those regulations after the repeal is uncertain, and clause 36(1)(k) makes their replacement discretionary.

- **Rules are made without public participation.** Clause 4(2) makes the tariff and maximum price dependent on 'the methodology contemplated in section 37'. Clause 37 provides that the Energy Regulator 'may' make rules on that methodology. Unlike clause 36(2), which obliges the Minister to invite and consider public comment before promulgating regulations, clause 37 contains no consultation requirement at all. The most consequential determinant of what the public pays for gas is thus to be settled by an instrument that need never be published in draft and need never be made. The Green Connection notes that the 2021 Rules do not presently contain a pricing methodology, and that no draft rules accompanied the Bill.

The Green Connection notes that members of this Committee identified the affordability of gas and the regulation of tariffs as a key issue at the briefing of 6 May 2026, and emphasised the need to ensure that pricing mechanisms protect households. It submits that the Bill as drafted does not achieve that.

The Green Connection recommends that:

(a) Clause 37 be amended to require the Energy Regulator, before making any rule, to publish the draft rule for public comment for a period of not less than 30 days and to consider the comments received; and clause 37(i) be amended to require (rather than permit) the making of a rule prescribing the methodology for determining tariffs and maximum prices.

(b) Clause 4 be amended to incorporate the price regulation principles presently contained in regulation 4(3) of the Piped Gas Regulations, 2007, namely that the determination be objective, fair, non-discriminatory, transparent and predictable and include efficiency incentives.

(c) Clause 4 be amended to require the Energy Regulator to determine maximum prices for residential customers by distribution area, and to require invoices to itemise the acquisition or production cost of the gas and all tariff and other charges.

(d) Clause 4(2)(b) be amended so that the methodology must promote not only access to affordable gas but also the protection of low-income and vulnerable customers from price volatility, and so that the Energy Regulator is empowered to prescribe mechanisms limiting the pass-through of international price movements to such customers.

(e) Clause 28 be amended to require the Minister, before making a determination the implementation of which will expose customers to international gas prices, to publish an assessment of the price risk and of its incidence across customer categories.

9. Competition / Exclusive Use

Clause 4 of the Gas Bill empowers the Energy Regulator to set, regulate and monitor prices in the absence of a competitive market. Section 4(j) of the Gas Act lists among the Gas Regulator's functions to 'promote competition in the gas industry', and section 4(k) to 'promote the optimal use of available gas resources'. Neither function appears in clause 3 of the Bill. What appears instead, in clause 3(e), is a function to 'regulate, facilitate and promote **participation in the gas industry** in accordance with relevant government policy and plans'. The promotion of competition survives only as an object in clause 2(c), which is not addressed to the Energy Regulator and is confined to trade in gas. Removing the competition function while simultaneously introducing a statutory exclusivity regime in clause 17 is, it is submitted, the wrong direction of travel.

Clause 17(1) provides that an applicant for a licence to construct a distribution facility within a particular geographic area or to supply gas in a particular area may, at the time of submitting the licence application, request the Energy Regulator to grant it the exclusive right to this licence and to the associated licences within that geographic area, for a particular range of specifications of gas and for a specified period. On the face of it clause 17 is inconsistent with object section 2(c) 'promote competitive and sustainable trade in gas'.

The Green Connection recommends that:

(a) Clause 3 be amended to restore, as functions of the Energy Regulator, the promotion of competition in the gas industry.

(b) Clause 17 be amended to provide that exclusivity may be granted only after public notice and an opportunity for interested and affected parties to make representations; only for a period not exceeding a prescribed maximum; and only where the Energy Regulator is satisfied that exclusivity is necessary and is consistent with the object in clause 2(c).

10. Environmental Alignment and Rehabilitation of Land

It is noted that clause 34 of the Gas Bill stipulates that the principles set out in section 2 of the National Environmental Management Act, 1998, serve as guidelines for the interpretation, administration and implementation of this Bill, and that the principles apply to all decisions and actions taken under this Bill. The clause also provides that a licensee who surrenders a licence; a licensee whose licence is revoked; or a registrant whose registration is cancelled, must comply with the applicable laws relating to the environment including damage to and pollution of the environment and the rehabilitation of land.

As to clause 12(3)(f), the Green Connection notes that the requirement that an application include 'the plans and ability of the applicant to comply with all applicable labour, health, safety and environmental legislation' is carried over unchanged from section 16(2)(f) of the Gas Act, which was enacted before the current NEMA environmental authorisation regime had matured. A statement of plans and ability is not the same thing as an environmental authorisation. Where a listed activity is involved, the licence application should not be capable of being granted before the environmental authorisation has been obtained, since the Energy Regulator would otherwise be deciding whether to authorise construction of a facility whose environmental acceptability has not been determined by the competent authority.

The Green Connection recommends that:

(a) Clause 12(3)(f) be revised to require that any application for a licence include an environmental authorisation issued under NEMA, where applicable, or proof that no such authorisation is required.

11. Gas Master Plan

The Green Connection notes that clause 27 requires the Minister to develop a gas master plan, and to review and revise this plan every five years. Among other things, the clause requires the gas master plan to address a wide range of issues, including a plan for the development of the gas industry in the Republic, including (but not limited to) the development of new gas infrastructure, the expansion of existing gas infrastructure and the promotion of gas usage[32]; and various scenarios in respect of gas supply, demand and transportation and the estimated costs of those scenarios. [33]

The Green Connection is concerned that the gas master plan will be developed in the absence of an Integrated Energy Plan (IEP) developed under the National Energy Act (NEA).[34] Section 6(2) of the NEA provides (among other things) that the IEP must deal with issues relating to the supply, transformation, transport, storage of and demand for energy in a way that accounts for (among other things) security of supply, affordability, universal accessibility and free basic electricity; social equity; the environment, and international commitments. Section 6 provides that the IEP must serve as a guide for energy infrastructure investments.

The Integrated Energy Plan is, by design, the instrument in which the trade-offs between energy sources are made — including the trade-off between investing in gas infrastructure and investing in the alternatives. The gas master plan under clause 27 is, by contrast, a single-fuel plan: clause 27(5)(c) requires it to address 'a plan for the development of the gas industry … including the development of new gas infrastructure, the expansion of existing gas infrastructure and the promotion of gas usage'.

The Green Connection submits that this sequencing is the wrong way round. A plan whose terms of reference presuppose the expansion of gas infrastructure and the promotion of gas usage cannot answer the prior question whether gas expansion is the least-cost, lowest-risk means of meeting the Republic's energy needs consistently with its climate obligations. Developing the gas master plan in the absence of a current Integrated Energy Plan converts what should be an outcome of energy planning into a premise of it.

Two further concerns arise:

[32] Clause 27(5)(c).
[33] Clause 27(5)(d).
[34] Act No. 34 of 2008.

First, clause 27(5) makes no reference to greenhouse gas emissions. Clause 27(5)(h) requires 'a plan for the management of the environmental impacts of the gas industry', but there is no requirement that the gas master plan be consistent with the national greenhouse gas emissions trajectory, sectoral emissions targets or carbon budgets, and no requirement that it quantify the emissions implied by the scenarios it adopts.

Second, clause 27(5)(d) requires 'various scenarios in respect of gas supply, demand and transportation and the estimated costs of those scenarios', but does not require any scenario in which gas demand does not grow, nor any comparison against non-gas alternatives.

The Green Connection recommends that:

(a) Clause 27 be amended to provide that the gas master plan may not be finalised before a current Integrated Energy Plan has been promulgated under section 6 of the National Energy Act, and must be consistent with it.

(b) Clause 27(5) be amended to require the gas master plan to address the greenhouse gas emissions (including methane) implied by each scenario, and its consistency with the national greenhouse gas emissions trajectory, sectoral emissions targets and carbon budgets under the Climate Change Act.

(c) Clause 27(5)(d) be amended to require the inclusion of at least one scenario in which gas demand does not increase, and a comparison of the estimated costs of each gas scenario against non-gas alternatives for meeting the same energy service demand.

(d) Clause 27(5) be amended to require the plan to assess stranded asset risk and the exposure of customers and the fiscus to international gas price volatility.

12. Gas Licensing and Registration

The Gas Bill's Memorandum on Objects indicates that the Bill proposes two main regimes for regulating gas activities, namely licensing and registration. While the Gas Act also provided for gas licensing and registrations, registrations were limited to the production or import of gas, and an activity referred to in items 1 and 2 of Schedule 1 to that Act (namely any person engaged in the transmission of gas for that person's exclusive use, and small biogas projects in rural communities not connected to the national gas pipeline grid).

Clause 10 - Gas Licensing

Clause 10(1) of the Gas Bill stipulates that no person may without a licence from the Energy Regulator construct (or convert) and operate various gas facilities (transmission, storage, distribution, liquification, regasification), or trade in gas.

In terms of clause 10(3) persons engaged in an activity listed in Schedule 1 do not require a licence, but a person engaged in an activity referred to in items 1 and 2 of the Schedule must register the activity in accordance with section 23. Thus a person engaged in the reticulation of gas and any trading activity by a reticulator will not require a licence nor will they be required to register. These provisions are substantially similar to section 15(2) read with section 28(1)(b) of the current Gas Act (see comments relating to registrations below).

The Green Connection is concerned that the Bill places the Energy Regulator in a position of institutional conflict, and that it does so to a materially greater degree than the Gas Act does. Under the Gas Act, the Gas Regulator's promotional functions were narrow. Section 4(f) required it to consult with government departments and foreign gas regulatory authorities 'to promote and facilitate the construction, development and functioning' of gas facilities and services; section 4(j) required it to promote competition; and section 4(l) required it to take decisions not at variance with published Government policy. Under the Bill, clause 3(e) requires the Energy Regulator to 'regulate, facilitate and promote participation in the gas industry in accordance with relevant government policy and plans' — a general and forward-leaning promotional mandate directed at the industry it regulates. The competition function has been removed.

Three further provisions compound the difficulty. Clause 16(2) requires the Energy Regulator, when deciding a licence application, to satisfy itself that granting the licence 'is not at variance with the objects of the Act' — objects which, in clause 2(a), (d), (f), (g) and (m), are to promote and facilitate the development of gas facilities, investment, markets and supply. Clause 28(6) provides that the Energy Regulator is **bound** by any ministerial determination in exercising its powers and performing its functions. Clause 15(3) permits the Minister to publish imperatives that the Energy Regulator **must** consider in every licence application.

The cumulative effect is that the body which decides whether a particular gas facility should be licensed is statutorily directed to promote the gas industry, is bound by ministerial determinations that the facility is required, and must apply imperatives set by the Minister. The Green Connection submits that an objector appearing before such a body, in respect of a facility that has already been the subject of a clause 28 determination, faces a decision-maker who is not in a position to refuse.

Clause 11 – Activities No Longer Requiring Licensing

As discussed in the section on Minister's Extended Powers (Clause 11) above, the Minister may by regulation determine any activity contemplated in section 10(1) as no longer requiring a licence. The Green Connection is concerned that this power is unconstrained, may remove significant activities from the regulatory net entirely, and is not accompanied by a simultaneous obligation to prescribe those activities as registrable. The recommendations set out in that section apply.

Clause 23 - Registration

Clause 23(1) requires persons undertaking the exportation or importation of gas, or purchasing gas as an eligible customer, to register with the Energy Regulator. Persons engaged in the transmission or distribution of gas for their exclusive use, and biogas projects not connected to a transmission or distribution facility, must also register (clause 10(3) read with Schedule 1). Notably, gas production activities are not subject to licensing or registration under the Bill — it is assumed this reflects that upstream production falls under the Mineral and Petroleum Resources Development Act, 2002 and the UPRDA (not yet in operation).

As discussed in the section on Procedurally Fair Administrative Action above, no provision is made for public consultation or representations on registration applications. This gap applies equally to clause 23: a person whose rights may be materially affected by the registration of an import, export or eligible customer activity has no prescribed mechanism to be heard.

As further discussed in that section, the Bill also removes, measured against the Gas Act, three existing procedural protections: the duty to furnish reasons and notify objectors of the outcome of a decision (section 19(3) of the Gas Act); the statutory minimum for the publication of licence applications in newspapers circulating in the area in two official languages (section 17(1) of the Gas Act); and the express right of appeal to the High Court against decisions of the Gas Regulator (section 26(4) of the Gas Act). The recommendations set out in the Procedurally Fair

Administrative Action section above apply to all of these.

Clause 24 – Conditions on Registrable Activities

The framework for registration conditions in clause 24(1) is materially narrower than the framework for licence conditions in clause 18(1). As discussed in the section on Procedurally Fair Administrative Action above, the Green Connection is concerned that significant activities could migrate from the fuller licensing framework to the narrower registration framework without public participation on the consequences for the conditions capable of being imposed. The recommendations set out in that section apply.

Clause 26 – Cancellation of Registration

Clause 26 empowers the Energy Regulator to cancel a registration in defined circumstances, none of which relates to the climate consequences of the registered activity. The Green Connection submits that the Energy Regulator should be empowered to cancel a registration where the registered activity is, or in future becomes, inconsistent with the Republic's climate change commitments and with the relevant provisions of the Climate Change Act, including the national greenhouse gas emissions trajectory (or, pending its publication, the Republic's latest Nationally Determined Contribution, which operates as the trajectory in the interim), any applicable sectoral emissions target and any applicable carbon budget. An equivalent power should be conferred in respect of licences under clause 22.

The Green Connection recommends that:

(a) Clause 3 be amended to provide expressly that the Energy Regulator must exercise its licensing, registration and enforcement functions independently and impartially, and that the function in clause 3(e) does not derogate from that obligation.

(b) Clause 24(1) be amended to permit the imposition of registration conditions relating to environmental management, greenhouse gas emissions reporting, and decommissioning and rehabilitation.

(c) Clause 26 be amended to empower the Energy Regulator to cancel a registration where the registered activity is, or becomes, inconsistent with the national greenhouse gas emissions trajectory, any applicable sectoral emissions target or any applicable carbon budget under the Climate Change Act; and clause 22 be amended to confer an equivalent power in respect of licences.

PART B: ADDITIONAL COMMENTS

13. Decommissioning and Rehabilitation (clause 36(1)(f))

It is noted that clause 36(1)(f) of the Gas Bill empowers the Minister to make regulations regarding the decommissioning of licensed gas facilities and rehabilitation of land used in connection with the transmission, storage, distribution, liquefaction or re-gasification of gas or the trading therein, the provision of security for rehabilitation purposes and the composition and amount of such security.

Clause 18(1)(o) permits a condition dealing with decommissioning, rehabilitation of affected land, and funding for decommissioning and rehabilitation costs. Both are framed as matters the Energy Regulator **may** address, within a discretionary framework. The Green Connection submits that it should be mandatory.

Regulation 11 of the Piped Gas Regulations, 2007 presently imposes two mandatory obligations: first, a licensee must submit a closure plan to the Gas Regulator not later than six months before termination, relinquishment or abandonment, and that plan must include an environmental impact assessment of the termination and abandonment; second, the Gas Regulator may not consent to termination of the financial security arrangement before receiving an independent consultant's certificate that the site has been rehabilitated. The remaining provisions of regulation 11 are discretionary. Clause 36(1)(f) of the Bill replaces this framework with a discretionary power to make regulations on decommissioning and rehabilitation.

The Green Connection makes three submissions in relation to regulation 11 and clause 36(1)(f):

First, the obligations in regulation 11 are already substantially discretionary, and the Bill would make matters worse rather than better. Only regulation 11(1) and (2) are mandatory: the licensee must submit a closure plan six months in advance, and that plan must include the four categories of information listed, including an environmental impact assessment of the termination and abandonment of the activity. Thereafter the regulation shifts to the permissive: the Gas Regulator 'may' approve the plan subject to conditions; licence conditions 'may' incorporate rehabilitation legislation and 'may' include environmental performance bonds; the financial provision 'may' include the listed instruments; and the Gas Regulator 'may' require written confirmation of NEMA compliance. Only regulation 11(7) is protective in mandatory terms, in that the Gas Regulator may not consent to termination of the financial security before receiving an independent consultant's certificate that the site has been rehabilitated. The Green Connection submits that the existing framework is already inadequate: there is no mandatory obligation to require financial provision at all. Under the Bill, even this framework is placed at risk by the repeal, and clause 36(1)(f) merely confers a discretion to remake it.

Second, the position under NEMA does not fill the gap. The Financial Provisioning Regulations made under section 24(5)(b)(ix) and 24P of NEMA are directed at the financial provision for rehabilitation and remediation of environmental impacts from prospecting, exploration, mining or production operations. Midstream gas activities regulated under the Gas Bill — transmission pipelines, storage, distribution, liquefaction and re-gasification facilities — are not prospecting, exploration, mining or production operations. Such facilities will generally require environmental authorisation under the NEMA EIA Regulations, and section 24R of NEMA and the conditions of an environmental authorisation may address closure; but there is no equivalent, systematic, quantified financial provisioning regime applicable to them.

Third, decommissioning liability is the point at which stranded asset risk becomes a public liability. If LNG import, re-gasification and transmission infrastructure is built on 25-year cost recovery assumptions and ceases to be economic before the end of that period, the licensee may be in financial distress precisely when the decommissioning obligation crystallises. Clause 22(1)(b) contemplates revocation where a licensee has entered insolvency, winding up, business rescue or liquidation. Clause 21(4) permits the Energy Regulator to accept the surrender of a licence if satisfied that rehabilitation requirements have been complied with, but a licensee in liquidation may simply not apply to surrender. Without mandatory, ring-fenced and independently quantified financial provision secured at the outset, the residual liability falls to the State and to the communities in which the infrastructure sits.

The Green Connection recommends that:

(a) Clause 36(1)(f) be amended to replace 'may' with 'must', and to require that regulations on decommissioning, rehabilitation and financial provision be made within twelve months of commencement.

(b) A substantive clause be inserted into the Bill requiring every licensee to provide financial provision for decommissioning, closure and rehabilitation, assessed by an independent competent person, reviewed at prescribed intervals, ring-fenced from the licensee's insolvent estate, and not capable of release until an independent competent person has certified that the site has been rehabilitated.

(c) The obligation presently contained in regulation 11(1) and (2) — a closure plan submitted not later than six months before termination, relinquishment or abandonment, including an assessment of the environmental impacts of the termination and abandonment — be incorporated into the Bill itself.

(d) Clause 18(1)(o) be reframed as a mandatory licence condition.

(e) Clause 34(3) be amended to provide that the obligations to comply with laws relating to environmental damage, pollution and rehabilitation survive the surrender, revocation or cancellation of the licence or registration, and bind the former licensee or registrant and its successors in title.

14. Parliamentary Procedure and Schedule 4 Impacts

The Green Connection notes that the Gas Bill has been introduced in the National Assembly as a proposed section 76 Bill.

The Memorandum on Objects records the State Law Advisers' opinion that, applying the 'substantial measure' tagging test confirmed in *Tongoane and Others v Minister of Agriculture and Land Affairs and Others*[35], the Bill must be tagged as a section 76 Bill, because it deals not only with 'gas reticulation' (Schedule 4 Part B to the Constitution) but also with 'trade' (Schedule 4 Part A). The Green Connection agrees with the conclusion and supports the tagging.

[35] *Tongoane and Others v Minister of Agriculture and Land Affairs and Others* [2010] ZACC 10; 2010 (6) SA 214 (CC), cited in the Memorandum on Objects at items 6.1 to 6.3.

This reasoning understates the extent to which the Bill affects the provinces and municipalities. Beyond reticulation and trade, the Bill engages ‘environment’, ‘pollution control’, ‘nature conservation’, ‘regional planning and development’, ‘urban and rural development’ and ‘disaster management’, all of which are functional areas of concurrent competence under Schedule 4 Part A. It also engages ‘municipal planning’ under Schedule 4 Part B. Clause 35 requires a licensee to consult and coordinate with the municipality in whose area a street or road is situated, and to act in accordance with a route and specifications approved by that municipality; but clause 29(2) applies the Infrastructure Development Act, 2014 to determinations, and clause 28(6) and (7) bind organs of state to ministerial determinations. The interaction between those provisions and municipal planning authority is not addressed in the Bill.

The Green Connection accordingly supports the section 76 tagging and submits that the National Council of Provinces and the provincial legislatures should be afforded a full opportunity to consider the Bill, including through provincial public hearings in the coastal provinces affected by the offshore and coastal infrastructure the Bill is intended to facilitate.

15. NEDLAC consideration and National House of Traditional and Khoi-San Leaders consultation

The Green Connection notes that NEDLAC is indicated as having been consulted, and the requirement to consult with the National House of Traditional and Khoi-San Leaders has been correctly identified.

The Memorandum on Objects records, at item 4, that the Department consulted the Energy Regulator, the Competition Commission, NEDLAC, the Office of the Presidency and the Office of the Chief State Law Adviser, and that the amendments proposed in the Bill were published for public comment.[36]

The Green Connection makes two observations:

[36]GN 4257 of 19 January 2024.

First, what was published for comment in January 2024 was a Gas Amendment Bill, not a Bill repealing and replacing the Gas Act. The Green Connection is concerned that the consultation on which the Department relies was directed at a materially different instrument, and that the same difficulty affects the SEIAS Report, as set out in Part A above.

Second, the Green Connection supports the State Law Advisers' conclusion that the Bill must be referred to the National House of Traditional and Khoi-San Leaders under section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019, because it deals with the expropriation of land and may impact land belonging to traditional communities. It respectfully submits that this conclusion has consequences which the Bill does not draw: if the Bill may impact land belonging to traditional communities, clause 33 should say so and should provide for the consultation of those communities before an expropriation decision is taken, as recommended in Part A above. Many small-scale fishing communities on the South African coast are Khoi-San communities holding rights in land and coastal resources under customary and informal tenure.

16. Conclusion

The Green Connection has set out its concerns at some length because the Gas Bill is not a technical modernisation of an outdated statute. It is a legislative instrument designed to create the domestic demand-side conditions for an expanded fossil gas industry, and it forms part of a broader legislative architecture — with the Upstream Petroleum Resources Development Act and the South African National Petroleum Company Bill — whose combined purpose is to accelerate offshore and onshore oil and gas development and the importation of LNG. None of those three instruments contains any climate change provision.

The communities the Green Connection supports — small-scale fishers and fishing-dependent communities who experienced discrimination and dispossession during the apartheid era — stand to bear the consequences of that architecture without having been consulted about it. They are not identified anywhere in the Department's Socio-Economic Impact Assessment. They are not provided for in the Bill's expropriation clause, notwithstanding the State Law Advisers' own conclusion that the Bill may impact land belonging to traditional communities. Their right to be told, in a language they read and in a newspaper circulating where they live, that a facility is proposed near them presently rests in rules whose survival the Bill leaves in doubt and does not replace. And the risk to their livelihoods from a major oil spill arising from the offshore exploration and production that a domestic gas market is intended to make commercially viable is not assessed anywhere at all. The courts have already recognised, in the context of offshore exploration off the Wild Coast, that decisions of this kind engage the livelihood, cultural and spiritual rights of small-scale fishing communities and the climate consequences of exploiting the resource, and that a failure to consider them renders the decision unlawful.[37]

A Bill which is silent on climate change, which leaves binding procedural protections without an express saving and without replacement, which concentrates discretion in the Minister without corresponding participation rights, and which rests on a socio-economic assessment directed at a different instrument, is not ready for enactment.

For the reasons set out above, the Green Connection submits that the Gas Bill should be withdrawn.

If Parliament nonetheless proceeds with the Gas Bill, the Green Connection submits that the amendments recommended in Parts A and B of these comments are, as a minimum, required.

The Green Connection thanks the Committee for the opportunity to comment, and requests the opportunity to make oral submissions when public hearings are held.

Yours faithfully

Adrian Leonard Pole

[37] *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others* (3491/2021) [2022] ZAECMKHC 55; 2022 (6) SA 589 (ECMk) (1 September 2022), upheld on the merits in *Minister of Mineral Resources and Energy and Others v Sustaining the Wild Coast NPC and Others* (58/2023; 71/2023; 351/2023) [2024] ZASCA 84; 2024 (5) SA 38 (SCA) (3 June 2024), in which the Supreme Court of Appeal dismissed the appeal save as to the remedy, suspending the order of invalidity pending the outcome of the third renewal application.