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THE PRESIDENCY

No. 100 15 January 2003

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 75 of 2002: Gas Regulator Levies Act, 2002.

IHOVISI LIKAMONGAMELI

No. 100 15 January 2003

Ngalokhu ukwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzo-shicilelelwa umphakathi:—

Ino 75 ka-2002: Umthetho weziNtela zoMlawuli weGesi, ka-2002.



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(English text signed by the President.)
(Assented to 30 December 2002.)

ACT

To provide for the imposition of levies by the National Gas Regulator; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
 - “distribution” means “distribution” as defined in the Gas Act; 5
 - “gas” means “gas” as defined in the Gas Act;
 - “Gas Act” means the Gas Act, 2001 (Act No. 48 of 2001);
 - “Gas Regulator” means the National Gas Regulator established by section 3 of the Gas Act;
 - “importer” means the owner, at the point of importation, of gas imported into the Republic of South Africa, either by pipeline or in the form of liquefied natural gas and “imported” has a similar meaning; 10
 - “levy” means the amount imposed under section 2;
 - “Minister” means the Minister of Minerals and Energy;
 - “producer” means an entity that recovers gas from wells in the earth or that manufactures synthetic or artificial gas; 15
 - “Public Finance Management Act” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “transmission” means “transmission” as defined in the Gas Act.

Imposition of levies

2. (1) The Gas Regulator may by notice in the *Gazette*—
 - (a) impose levies for the purpose of meeting the general administrative and other costs of the Gas Regulator and the functions performed by the Gas Regulator;
 - (b) specify the intervals and times in respect of the payment of such levies;
 - (c) determine interest as contemplated in section 4; and 25
 - (d) vary levies.
- (2) The levies imposed and varied under subsection (1) must be—
 - (a) based on the amount of gas, measured in gigajoules, delivered by importers and producers to inlet flanges of transmission or distribution pipelines; and
 - (b) paid by the person holding the title to the gas at the inlet flange. 30
- (3) Before imposing levies, varying levies, or determining interest, the Gas Regulator must—
 - (a) publish the proposed levies, variation or determination in such a manner as it considers appropriate in order to bring the proposed levies, variation or determination to the attention of stakeholders in the gas industry, together with a statement explaining the reasons for the proposed imposition or 35

(English text signed by the President.)
(Assented to 30 December 2002.)

UMTHETHO

Ukuhlinzekela ukumiswa kwezintela nguMlawuli weGesi kaZwelonke; kanye nokuhlinzekela nokunye okuphathelene nako.

MAYIMISWE yiPhalamende laseNingizimu Afrika, ngokulandelayo:—

Izincazelo

1. Kulo Mthetho, ngaphandle kokuthi ingqikithi ichaza ngokunye—
 - “ukwaba” kusho “ukwaba” njengoba kuchazwe kuMthetho weGesi; 5
 - “igesi” isho “igesi” njengoba kuchazwe kuMthetho weGesi;
 - “UMthetho weGesi” usho uMthetho weGesi, ka 2001 (uMthetho No. 48 ka 2001);
 - “Umlawuli weGesi” usho uMlawuli weGesi kaZwelonke owamiswa yisigaba 3 soMthetho weGesi;
 - “umthengi ngaphandle kwezwe” usho umnikazi, ngesikhathi kuthengwa ngaphandle kwezwe, wegese ethengwe ngaphandle kwezwe ya lethwa eNingizimu Afrika, ngepayipi noma ngesimo segesi yemvelo eyenziwe amanzi futhi
 - “okuthengwe ngaphandle kwezwe” kunencazelo efanayo;
 - “intela” isho inani elimiswe ngaphansi kwesigaba 2;
 - “uNgqongqoshe” usho uNgqongqoshe wezama minerali na mandla; 15
 - “umkhiqizi” usho isizinda esithola igesi kwimithombo emhlabeni noma esikhiqiza igesi ye sintethiki noma yokuzakhela;
 - “UMthetho wokuLawulwa kwezi Mali zoMphakathi” usho uMthetho woku Lawulwa kwezi Mali zoMphakathi, ka 1999 (uMthetho No. 1 ka 1999);
 - “ukusabalalisa” kusho “ukusabalalisa” njengoba kuchazwe kuMthetho weGesi. 20

Ukumiswa kwezintela

2. (1) Umlawuli we gesi ngokwazisa kwi *Phephandaba lika Hulumeni*—
 - (a) angamisa izintela ngezinhloso zokuhlangabezana nezindleko ezejwayelekile zobu phathiswa nezinye zoMlawuli weGesi kanye nemisebenzi eyenziwe nguMlawuli weGesi; 25
 - (b) angazisa ukushintshashintsha nezikhathi mayelana noku khokhwa kwalezi zintela;
 - (c) abeke inzalo njengoba kukhonjwe kwisigaba 4; futhi
 - (d) ahlukane izintela.
- (2) Izintela ezimiswe futhi zahlukaniswa ngaphansi kwesigatshana (1) kumele— 30
 - (a) zincike kubungako begesi, ekalwe ngobukhulukazi obungama *gigajoules*, ehanjiswa ngabathenga ngaphandle kwezwe kanye naba khiqizi kwizixhumanisi ezamukelayo (inlet flange) zoku sabalalisa noma amapayipi okwaba; futhi
 - (b) zikhokhwe ngumuntu onetayitela legesi kwisi xhumanisi esamukelayo. 35
- (3) Ngaphambi kokumisa izintela, izintela ezahlukahlukene, noma ukumisa inzalo, uMlawuli weGesi kumele—
 - (a) Akhiphe izinhlawulo ezicatshangwayo, ukwehlukahlukana noma ukumiswa ngaleyondlela ayibona ifanelekile ukuze abonise ababambe iqhaza embonini yegesi, izintela ezicatshangiwe, ukwehlukahlukana noma ukumiswa, kanye nesitatimende esichaza izizathu zezimiso ezicatshangiwe noma 40

variation of levies or determination of interest and an invitation for representations to be made to the Gas Regulator within a specified and reasonable time;

- (b) have regard to any representation made to it in terms of paragraph (a);
- (c) give the Minister notice in writing of the proposed imposition or variation of levies, or determination of interest, and specify the period for which such imposition, variation or determination is intended to be operational;
- (d) provide the Minister with reasons for the imposition or variation of levies or determination of interest;
- (e) provide the Minister with evidence of consultation with stakeholders or attempts to consult with stakeholders in the gas industry and of the degree of concurrence among such stakeholders with regard to the imposition or variation of the levies or determination of interest.

(4) The Minister must, with the concurrence of the Minister of Finance, within a period of 60 days after receiving a notice contemplated in subsection (3)(c), give the Gas Regulator written approval or disapproval of the proposed imposition, variation or determination and, in the event of disapproving that imposition, variation or determination, also give reasons for the disapproval thereof.

(5) After the receipt of the notice as contemplated in subsection (4), the Minister may, with the concurrence of the Minister of Finance, recommend an alternative levy or interest determination.

(6) The Gas Regulator may impose or vary levies or determine interest under subsection (1) only after the levies or interest has been approved by the Minister with the concurrence of the Minister of Finance.

(7) The Gas Regulator must publish the notice contemplated in subsection (1) at least 30 days before the commencement of that imposition, variation or determination.

(8) The levies imposed, levies varied or interest determined under subsection (1) must be reviewed annually by the Gas Regulator.

Disposal and management of levies

3. (1) The levies imposed, levies varied and interest determined under section 2(1) form part of the funds of the Gas Regulator.

(2) The levies and interest collected by the Gas Regulator must be paid into a bank account designated for that purpose by the Gas Regulator and approved by the National Treasury in terms of section 7(2) of the Public Finance Management Act.

(3) (a) At least six months before the start of the financial year of the Department of Minerals and Energy, or such other period as may be agreed upon between the Minister and the Gas Regulator, the Gas Regulator must submit to the Minister—

- (i) a budget of estimated revenue and expenditure for the next financial year of the Gas Regulator as required by section 53 of the Public Finance Management Act; and
- (ii) a business plan in the format prescribed under section 54(1) of the Public Finance Management Act, covering the affairs of the Gas Regulator for the following three financial years.

(b) The budget and business plan contemplated in paragraph (a) must be submitted for the approval of the Minister and the concurrence of the Minister of Finance.

Non-payment of levies

4. (1) Where a levy is not paid by the person contemplated in section 2(2)(b) on the day such levy becomes due and payable, that person is, apart from payment of the levy, liable to interest calculated upon the unpaid amount of the levy from that date, subject to subsections (2) and (3).

(2) The calculation of interest due and payable to the Gas Regulator must be based on the uniform interest rate contemplated in section 80(1)(b) of the Public Finance Management Act.

ukwehlukahlukanana kwezintela noma ukumisa inzalo kanye nokumema izimiso ezingabekwa kuMlawuli weGesi esikhathini esibekiwe futhi esinomqondo;

- (b) abhekelele noma yiziphi izimiso ezibekwe kuye ngokwendima (a);
- (c) anike uNgqongqoshe isaziso ngombhalo ngesimiso esicatshangiwe noma ukwehlukahlukana kwezintela, noma ukubekwa kwenzalo, futhi abeke isikhathi ekuhloswe ngaso ukuthi kusebenze lesi simiso, ukwehlukahlukana noma ukumisa; 5
- (d) ahlinzeke uNgqongqoshe ngezizathu zokumisa noma ukwehlukahlukana kwezintela noma ukubeka inzalo; 10
- (e) ahlinzeke uNgqongqoshe ngobufakazi bokuthintana nababambe iqhaza noma imizamo yokuthinta ababambe iqhaza embonini yegesi kanye nezinga lokuvumelana kwalaba ababambe iqhaza mayelana nokumiswa noma ukwehlukahlukana kwezinhlawulo noma ukumiswa kwenzalo.

(4) UNgqongqoshe, ngokuvumelana noNgqongqoshe wezeziMali, kumele kuthi esikhathini esiyizinsuku ezingu 60 ethole isaziso esikhonjwe kwisigatshana (3)(c), akhiphele uMlawuli weGesi isamukelo noma ukuchithwa okubhaliwe kwesimiso esicatshangiwe, ukwehlukahlukana noma ukumisa futhi, lapho isimiso, ukwehlukahlukana noma ukumisa kuchithwa, kumele futhi anike izizathu zaloko.

(5) Ngemuva kokuthola isaziso esikhonjwe kwisigatshana (4), uNgqongqoshe, ngokuvumelana noNgqongqoshe wezeziMali, kumele enze izincomo zolunye uhlobo lwentela noma ukubeka inzalo.

(6) Umlawuli weGesi angamisa noma ahlukahlukanise izintela noma abeke inzalo ngaphansi kwesigatshana (1) kuphela ngemuva kokuthi izintela noma izinzalo sezamukelwe nguNgqongqoshe ngokuvumelana noNgqongqoshe wezeziMali. 25

(7) Umlawuli weGesi kumele akhiphe isaziso esikhonjwe kwisigatshana (1) kusasele Okungenani izinsuku ezingu 30 ngaphambi kokuqalisa kwaleso simiso, ukwehlukahlukana noma ukumisa.

(8) Izintela noma izinzalo ezibekwe ngaphansi kwesigatshana (1) kumele zibuyekezwe minyaka yonke nguMlawuli weGesi. 30

Ukuqedwa kanye nokulawulwa kwezintela

3. (1) Izintela ezimisiwe, izintela ezahluhlukanisiwe kanye nenzalo ebekwe ngaphansi kwesigaba 2(1) kuba yingxenye yezimali zoMlawuli weGesi.

(2) Izintela kanye nenzalo okuqoqwe nguMlawuli weGesi kumele kukhokhwe kwi akhawunti yebhange uMlawuli wegesi ayibekele loku futhi eyamukelwe wuphiko lazwelonke lwezezimali ngokwesigaba 7(2) soMthetho wokuLawulwa kwezezi Mali zoMphakathi. 35

(3) (a) Kumele kuthi okungenani ezinyangeni eziyisithupha ngaphambi kokuqala konyaka wezimali woMnyango wezaMaminerali naMandla, noma lesi sikhathi ekuyovumelana ngaso uNgqongqoshe noMlawuli weGesi, uMlawuli weGesi ahambise kuNgqongqoshe— 40

(i) ulwabomali lwesilinganiso sezimali nochithomali konyaka wezimali olandelayo woMlawuli weGesi njengoba kufunwa yisigaba 53 soMthetho wezokuLawulwa kweziMali zoMphakathi; kanye

(ii) nohlelo lwebhizinisi olungendlela ebekwe ngaphansi kwesigaba 54(1) so Mthetho wezokuLawulwa kweziMali zoMphakathi, oluphethe izindaba zoMlawuli weGesi Zeminyaka yezimali emithathu elandelayo. 45

(b) Ulwabomali kanye nohlelo lwebhizinisi okukhonjwe kwindima (a) kumele kuhanjise ukuthi uNgqongqoshe ayamukele ngokuvumelana noNgqongqoshe wezezi mali. 50

Ukungakhokhwa kwezintela

4. (1) Lapho umuntu okhonjwe kwisigaba 2(2)(b) engakhokhi intela ngosuku ekumele ayikhokhe ngalo, lowo muntu kumele akhokhe inzalo, ngaphandle kwentela, ebalwa ngemali angayikhokhanga kusukela ngalolosuku, ngokuhambelana nezigatshana (2) no (3). 55

(2) Ukubalwa kwenzalo ekumele ikhokhwe kuMlawuli weGesi kumele ihambelane nezinga lenhlawulo elifanayo elikhonjwe kusigaba 80(1)(b) soMthetho wokuLawulwa kweziMali zoMphakathi.

(3) Levies and interest due are deemed to be a debt due to the Gas Regulator and may be recovered by the Gas Regulator by judicial process in any competent court.

Levy imposition to lapse after five years

5. (1) Subject to subsection (2), any levy imposed in terms of section 2(1)(a) lapses five years after the day on which it was introduced. 5

(2) The Minister must, at least three months but not more than 12 months before the day on which an imposition of a levy contemplated in section 2(1)(a) would otherwise lapse, at the written request of the Gas Regulator and with the concurrence of the Minister of Finance, give the Gas Regulator in writing approval or disapproval of a re-imposition of such levy and, in the event of disapproving the re-imposition, also give reasons for the disapproval thereof. 10

(3) Before approving a re-imposition contemplated in subsection (2), the Minister must commission a review of the performance of the Gas Regulator as contemplated in section 6.

Assessment of performance of Gas Regulator

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6. (1) In this section “performance” in relation to the Gas Regulator means all or any of the following matters:

- (a) The efficiency, economy and effectiveness of the Gas Regulator’s management of the financial resources at its disposal;
- (b) the benefits deriving from the Gas Regulator’s work to those who bear the levies and other charges imposed by the Gas Regulator; and 20
- (c) any other matter determined by the Minister in writing and with the concurrence of the Minister of Finance.

(2) The Minister may, after consultation with the Gas Regulator, appoint any person to conduct an assessment of, and report to the Minister and the Minister of Finance on, the performance of the Gas Regulator if the Minister is satisfied that— 25

- (a) there is sufficient concern among stakeholders in the gas industry about the performance of the Gas Regulator to justify an assessment of that performance; or
- (b) the performance of the Gas Regulator is inadequate. 30

(3) (a) Notwithstanding subsection (2), the Minister must commission an assessment of the performance of the Gas Regulator at least once every five years.

(b) The person appointed to conduct the assessment contemplated in paragraph (a) must report to the Minister and the Minister of Finance.

Short title and commencement

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7. This Act is called the Gas Regulator Levies Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) Izintela kanye nenzalo efanele ikhokhwe kuba yisikweletu ekumele sikhokhelwe uMlawuli weGesi kanti singaqoqwa ngenqubo yomthetho kunoma iyiphi inkantolo enobuqhudlwano.

Ukumiswa kwentela kuphelelwa yisikhathi ngemuva kweminyaka emihlanu

5. (1) Ngokuhambelana nesigatshana (2), noma iyiphi intela emiswe ngokwesigaba 2(1)(a) iphelelwa yisikhathi ngemuva kweminyaka emihlanu kusukela ngosuku eyamiswa ngalo. 5

(2) UNgqongqoshe kumele kuthi okungenani ezinyangeni ezintathu kodwa kungabi ngaphezu kwezinyanga ezingu 12 ngaphambi kosuku okwamiswa ngalo intela ekhonjwe kusigaba 2(1)(a) iphelelwe yisikhathi, ngokucelwa nguMlawuli weGesi ngombhalo kanye nokuvumelana noNgqongqoshe wezeziMali, anike uMlawuli weGesi isamukelo noma ukuchithwa okubhaliwe kokumisa kafuthi lentela futhi, uma kuchithwa ukumiswa kabusha kwentela, anike izizathu zaloko kuchithwa. 10

(3) Ngaphambi kokuthi amukele ukumiswa kabusha okukhonjwe kwisigatshana (2), uNgqongqoshe kumele alayeke ukubhekwa kokuthi uMlawuli weGesi usebenze kanjani njengoba kukhonjwe kwisigaba 6. 15

Ukuhlolwa kokusebenza ko Mlawuli weGesi

6. (1) Kulesi sigaba “ukusebenza” mayelana noMlawuli weGesi kusho konke noma okunye kwalokhu okulandelayo:

(a) Ukugculisa, umnotho kanye nokwanelisa koMlawuli we gesi ekumenenjeni imithombo yezezimali eqondene naye; 20

(b) izinzuzo ezitholwa ku Mlawuli weGesi yilabo abakhokha izintela kanye nokunye ukukhokha ukumiswa nguMlawuli weGesi; kanye

(c) noma yiluphi olunye udaba olubekwa nguNgqongqoshe ngombhalo ngokuvumelana no Ngqongqoshe wezeziMali. 25

(2) UNgqongqoshe, ngemuva kokuxhumana noMlawuli weGesi, angaqoka noma ngubani ukuthi ahlole, futhi abike kuNgqongqoshe kanye noNgqongqoshe wezeziMali, ukusebenza koMlawuli weGesi uma uNgqongqoshe anelisekile ukuthi—

(a) kunokukhathazeka okwanele kulabo ababambe iqhaza embonini yegesi ngokusebenza koMlawuli weGesi okuvuna ukuhlola kwalokhu kusebenza; noma 30

(b) ukusebenza koMlawuli wegesi akuphelele.

(3) (a) Nakuba kunesigatshana (2), uNgqongqoshe kumele alayeke ukuhlolwa kokusebenza koMlawuli weGesi okungenani kanye eminyakeni emihlanu.

(b) Umuntu oqokwe ukuthi enze ukuhlola okukhonjwe kwindima (a) kumele abike kuNgqongqoshe kanye noNgqongqoshe wezeziMali. 35

Isihloko esifushane kanye nokuqhubekela phambili

7. Lo Mthetho ubizwa ngokuthi uMthetho weziNtela zoMlawuli weGesi, ka2002, kanti uqala ukusebenza ngosuku olubekwa ngu Mongameli ngokumemezela kwi Phephandaba lika Hulumeni. 40

