

Johannesburg, South Africa

Gas Licence

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Johannesburg South Africa

Gas Licence By-law, 2000

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The Greater Johannesburg Transitional Metropolitan Council ("the Council") hereby published the Gas Licence by-laws set forth hereinafter, which have been made by the Council under section 156(2) of the Constitution of the Republic of South Africa, 1996 and in accordance with Chapter Three of the Rationalisation of Local Government Affairs Act, 1998 (Act 10 of 1998).

These by-laws provide for the development and maintenance of sustainable, efficient and affordable gas supply services by licensees within * the municipal boundary from time to time of the Greater Johannesburg Transitional Metropolitan Council.

1. Definitions

In these by-laws, unless the context otherwise indicates

"charge" means the amount in rands to be paid by a consumer for the supply of gas or any related amount, deposit or penalty for which a consumer may be liable;

"consumer" means a person who purchases or receives gas for consumption and not for delivery or resale, unless by agreement with a licensee, and includes a person who owns or occupies premises to which gas is supplied;

"Council" means the Greater Johannesburg Transitional Metropolitan Council established in terms of the Local Government Transition Act, 1993 (Act 209 of 1993) or its successors-in-title and includes the Chief Executive Officer from time to time thereof and any other duly authorised official of the Council who has been delegated any powers, functions and duties necessary to give effect to these by-laws and decide upon and administer the matters referred to herein;

"distribution" means the transportation of gas through distribution pipelines and associated facilities to points of ultimate consumption for the purpose of trading in gas, and any other activity incidental thereto, and "distribute" and "distributing" have corresponding meanings;

"distribution pipelines" means the pipelines, associated facilities and any other infrastructure necessary for the distribution of gas;

"gas" means any synthetic or natural product containing hydrocarbons which at an ambient temperature of 15°C (fifteen degrees Celsius) and at 1 (one) atmosphere of pressure is in a gaseous state, and is transported through a distribution pipeline;

"grantee" means a person granted special permission by the Council in terms of section 7(1);

"licence" means a licence granted by the Council under these by-laws for the supply of gas within a licence area;

"licence area" means the geographical area within the municipal boundary where a licensee is permitted to supply gas;

"licensee" means a person granted a licence;

"market power" means the power of a licensee to raise charges consistently and significantly above the level that would prevail in a competitive market`

"municipal boundary" means the municipal boundary of the Council as determined under the Local Government Transition Act, 1993 (Act 209 of 1993) and any notice thereunder or as determined or redetermined under the Municipal Demarcation Act, 1998 (Act 27 of 1998), as and when it comes into operation.

"storage" means the holding of gas piped into a storage facility for the transmission and distribution thereof at a later stage, and any of activity incidental thereto, and "store" and "storing" have corresponding meanings;

"supply" means transmission, storage, distribution or trading, and "supplier", "supplied" and "supplying" have corresponding meanings;

"trading" means the sale of gas, excluding gas derived from an LPG source, as a commodity to consumers by a licensee or grantee and includes any services or conditions associated therewith; and

"transmission" means transportation of bulk supplies by pipeline from a source of supply to a distributor or storage company, and any activity incidental thereto, and "transmit" and "transmitting" have corresponding meanings.

2. Licence Requirement

2.1 No person shall supply gas, other than gas from an LPG source, within the municipal boundary to a consumer without having obtained a licence or special permission from the Council in terms of these by-laws.

2.2 Licences issued and special permission granted under these by-laws—

- (a) shall be personal to the licensee or grantee and incapable of cession or assignment without the prior written consent of the Council;
- (b) shall be valid for the period stipulated in the licence or grant of special permission, which period may not exceed 30 (thirty) years, i. may be renewed for further periods upon application under these by-laws; and
- (c) may be revoked by the Council, on grounds for revocation which shall be enumerated in the licence or grant of special permission.

2.3 Subject to section 7, the Council may at its discretion issue a licence on an exclusive basis within a licence area.

3. Licence Application

Applications for a licence to supply gas shall be in writing on a form prescribed by the Council and shall be considered by the Council having regard to the following:

- 3.1 the financial, technological and managerial competency and experience of the applicant;
- 3.2 the capacity of existing suppliers and the sustainability of gas provision within the municipal boundary if the applicant is issued a licence;
- 3.3 the environmental, health and safety record of the applicant;
- 3.4 the applicant's ownership or control of land and any infrastructure necessary for the supply of gas; and
- 3.5 any other factor which the Council considers relevant.

4. Licence Terms and Conditions

4.1 Licences granted by the Council must—

- (a) describe the licence area;

- (b) specify the licence period and the procedure for any licence renewal as contemplated in section 2 (2) (b);
- (c) contain a requirement that the licensee must, within a reasonable period of time, adopt and abide by generally recognised written international or national standards, codes of practice and policies for the supply of gas, including technical standards of supply, quality standards, safety standards, units or standards of measurement for the verification of meters, and a capital contribution policy, which standard codes of practice and policies must be approved by the Council and made available to consumers in the licence area within a reasonable period of time after written request addressed to the licensee;
- (d) stipulate gas quality specifications;
- (e) require the licensee to provide information as the Council may, in writing, reasonably require relating to the licensee's business which relate to the supply of gas, including system performance, consumer supply figures, investment proposals and expansion plans, but subject the condition that any information designated commercially confidential by the licensee, and which so qualifies in the opinion of the Council shall be treated as such by the Council and may not be disclosed to any third party save where the Council is required to make a disclosure under Court order or by provincial or national legislation;
- (f) require the licensee to submit within a reasonable period a system operating procedure and an emergency response plan by licensee detailing its procedures and policies to ensure the safe and secure supply of gas in the licence area;
- (g) require the licensee to submit, on an annual basis, an incident report detailing any incidents substantially affecting human health safety or the environment arising out of the supply of gas by the licensee;
- (h) require a licensee to take out appropriate property and liability insurance for any gas distribution and storage facilities owned by it accordance with an insurance programme approved of by the Council under the licence, which approval shall not subject the Council to a liability if the insurance programme proves inadequate;
- (i) require the licensee, at Council's request, to submit a capital investment plan setting out the capital investment necessary to ensure compliance with the licence;
- (j) permit a licensee to access and expand all distribution pipelines and associated facilities in the licence area, subject to any applicable legislation;
- (k) permit a licensee to construct and lay distribution pipelines in or over public property in the licence area, subject to wayleave approval by the Council, and to exercise all of the Council's rights in or over private property in the licence area in relation to the supply of gas, subject to such conditions as may be stipulated in the licence;
- (l) permit a licensee to conduct any other business activity not regulated in the licence, provided that any such business activity may not adversely affect the licensee's obligations under the licence, these by-laws or any other law, and provided that such activities are separately accounted for;
- (m) stipulate procedures for amendment of the licence; (n) stipulate Circumstances under which the licence may be revoked by the Council and an appeals procedure;
- (o) permit a licensee, subject to the provisions of section 5 below, to collect any charges due to it from a consumer for the supply of gas;
- (p) prescribe the payment of a licence fee to cover the reasonable costs incurred by the Council in exercising its functions under the by-laws,
- (q) effect the transfer to the licensee of all the Council's rights (on the date of grant of the licence) under existing agreements for the supply of gas concluded by the Council within the licence area, and

- (r) contain any other term or condition that the Council considers relevant.

5. Determination, Approval and Publication of Tariffs and Related Charges

- 5.1 If, in the opinion of the Council, a licensee is, on the date of issue of a licence, able to exert significant market power, the Council shall describe the methodology to be used in determining the permitted tariff and related charges for the supply of gas which shall be included in the licence issued. Such methodology may be reviewed from time to time by the Council in consultation with the licensee, but at all times shall:
 - (a) Provide protection to consumers regarding the tariff and related charges;
 - (b) Enable a licensee to recover the costs of providing the service of such supply of gas, including a fair return on those investments made in connection with any activity authorised by the licence;
 - (c) Encourage and reward efficiency in the licensee's operation and investments; and
 - (d) Promote efficiency and economy in the use of gas.
- 5.2 If, in the opinion of the Council, a licensee is, after the date of issue of a licence, able to exert significant market power, the Council may, on reasonable notice to the licensee, amend the licence to include a methodology to be used in determining the permitted tariff and related charges for the supply of gas, and the provisions of section 5.1 shall apply mutatis mutandis to such methodology.
- 5.3 Notwithstanding anything contained in section 5.1 and 5.2, charges for the supply of gas shall not be unduly discriminatory.
- 5.4 Where a licensee's permitted tariff and related charges are to be determined in accordance with section 5.1 or 5.2, the licensee shall:
 - (a) Submit the tariff and related charges to Council for confirmation that the methodology described in the licence has been properly applied, and
 - (b) publish the tariff and related charges within a reasonable period before implementing them.

6. General Obligations of a Licensee or Grantee

Any licensee or grantee shall comply with any requirement or condition imposed by the licence or special permission (including amendments thereto), and any requirement imposed by legislation or regulation at municipal, provincial or national level including any requirement related to environmental protection, sustainable energy use and human health and safety.

7. Preservation of Rights

Any person which supplies gas within the municipal boundary may continue supplying gas to its existing consumers after these by-laws come into force, even if such consumers are located in the licence area of an exclusive licence, provided that it shall:

- 7.1 by no later than 6(six) months after the date of coming into force of these by-laws, or 6(six) months after the date of a demarcation that brings any of its existing consumers into the municipal boundary, apply for a special permission to continue supplying its existing consumers within the municipal boundary; and
- 7.2 be required to apply for a licence in the ordinary course if it intends to supply gas to new consumers within the municipal boundary.