Regulatory submission

7 August 2026

Comments on the Gas Bill, 2026 (Portfolio Committee on Electricity and Energy)

Just Share

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Arico Kotze

Committee Secretary, Portfolio Committee on Electricity and Energy

Parliament

By email: akotze@parliament.gov.za

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Dear Mr Kotze

Guarding against corporate lobbying on the Gas Bill, 2026

1. Just Share is a non-profit organisation that drives corporate accountability through strategic shareholder activism and responsible investment advocacy. We appreciate the opportunity to provide input on the Gas Bill, 2026 ("the Bill").

2. Upfront, we would also like to raise our concern about the short period for comment on the Bill. 22 days is wholly-inadequate to ensure procedurally fair and reasonable public participation. The Bill has far-reaching consequences for constitutional rights, and it is clearly in the public interest to make provision for more meaningful public participation. This is particularly the case for poor and marginalised communities, who are most directly affected by the consequences of the country's energy choices.

3. The short commenting period has hampered our ability to provide detailed comments on the Bill. Our submissions focus on corporate lobbying. We will also provide brief input on some clauses of the Bill.

4. The central concern is that the Bill is designed primarily as an economic and energy-sector regulatory statute to facilitate and accelerate the development of South Africa's gas sector**.** It fails to comprehensively integrate climate governance, environmental decision-making, transparency, or participatory rights. This makes the Bill highly susceptible to legal challenge.

5. **Corporate lobbying undermines credible policy and legislation**

5.1. To date, South Africa's air quality and climate policy have been significantly undermined by persistent lobbying by vested interests - particularly by the fossil fuel industry and its representatives - seeking to weaken and delay regulation. Just Share has repeatedly warned against government succumbing to this lobbying, which has been and continues to be to the detriment of the country's long-term environmental and economic sustainability.

5.2. We have published two reports on corporate lobbying in South Africa. The more recent report, *The Obstruction Playbook: How corporate lobbying threatens South Africa's Just Transition,* provides an evidence-based account of how the country's largest corporate polluters have worked persistently over two decades, in public and in private, to derail an effective climate policy response by the South African government. This is a real risk in relation to the Bill.

5.3. This corporate lobbying is largely unmonitored: it takes place behind closed-doors, in private bilaterial meetings between corporate players and policymakers. It is self-evident that government entities should keep records of all such engagements, but our research demonstrates that this is not the case. There is no public record of informal and/or recreational engagements between corporate representatives, politicians and departmental officials.

5.4. High-emitters repetitively deploy a series of arguments to convince policymakers that their proposed courses of regulatory action are unwise and will have devastating "unexpected" consequences.

5.5. These arguments are framed around three themes, expanded on in the *Obstruction Playbook* report: the emitters' "positive contribution" to society, South Africa's status as a developing economy, and the need for "alignment", incentives and low ambition. One of the most persistent arguments by industry actors, particularly in our high-emitting sectors, is that South Africa should be granted more time to decarbonise due to our status as a developing country with a "relatively small" share of global emissions. This is misleading and an incomplete reflection of the country's historical and ongoing responsibility for global greenhouse gases (GHGs).

5.6. The fossil fuel lobby also intervenes on energy policy by pushing for "enabling conditions", such as clearer market rules, permissive regulation and faster approvals to unlock the infrastructure needed for a viable gas economy. In this regard, we note that the Bill's Explanatory Memorandum refers to the alleged need to "eliminate red tape". Industry actors strategically use narratives of alleged urgency and national security to manufacture the idea there is an "anchor demand" that would justify the massive capital investment needed for South Africa to have a gas economy.

5.7. This lobby also co-opts just transition language and reinterprets it to mean a slower transition that not only maintains the status quo of our coal-based economy, but legitimises gas investment. Gas proponents frame the expansion of fossil gas as economically strategic and socially necessary.

5.8. One of the most often used of these narratives is the "gas cliff". High-emitters frame the "gas cliff" as an immediate threat to industrial continuity and therefore to the economy at large. In doing so, gas proponents position expanding gas infrastructure as an urgent and necessary response. They also exploit legitimate public concerns - such as job creation and electricity reliability - and portray gas as an essential “transition fuel” in order to present gas expansion as the only logical course of action. It is not.

5.9. The influence of the fossil fuel lobby on the country’s energy policy warrants serious public concern. If public finance, state-backed infrastructure planning, or procurement decisions are used to establish large-scale gas-to-power demand, this will lock South Africa into long-lived gas infrastructure and create commercial incentives to expand upstream exploration, LNG imports, and downstream gas markets to justify and recover those investments. This stands in opposition to the claim that gas is transitional. It also contradicts the country’s commitment to a just transition. Furthermore, it would have serious implications for South Africa’s fiscal exposure, energy planning, and emissions commitments, and puts the country at risk of stranded assets.

5.10. It is essential that the Portfolio Committee, and the Department of Electricity and Energy be alive to and guard against such disingenuous arguments as have been made, over the last two decades, by vested interests to delay and weaken a robust regulatory framework aimed at lowering South Africa’s emissions.

5.11. Future energy policy decisions and all submissions on the Gas Bill should include rigorous assessment of corporate claims about energy security, the “gas cliff” and industrial continuity. Too often, industry claims that gas infrastructure needs to be expanded have been accepted without adequate scrutiny of the risk of gas-lock in, stranded assets and whether gas expansion serves the public interest, rather than the corporate interests which stand to profit from “the gas economy”.

5.12. In addition, transparency and accountability should be bolstered by making all submissions from stakeholders in response to government calls for public comment on proposed legislation publicly available on the relevant government website. We call on the Committee and the Department to do so in relation to the Bill.

5.13. As we recommend in *The Obstruction Playbook*, South Africa should also establish mandatory public disclosure requirements for business-government interactions, including dates and attendees at meetings - whether formal or informal - and agendas, presentations and minutes of meetings.

5.14. Next, we make some submissions on the Bill itself.

6. **Brief submissions on the Bill**

Climate considerations missing and environmental considerations limited

6.1. The Bill does not expressly require decision-makers to give effect to section 24 of the Constitution of the Republic of South Africa, 1996. The *Deadly Air* judgement[1] confirmed that the environmental right is immediately enforceable and directly enforceable**.** The state has an immediate obligation to prevent harmful environmental conditions that threaten health and well-being. The Gas Bill fails in this regard.

6.2. There is, for example, no explicit requirement to consider climate change or GHG emissions in licensing decisions. Given the significant climate impacts of methane and South Africa's vulnerability to climate change, the Bill's failure to reference the Climate Change Act - or climate change at all - is a serious omission.

6.3. The International Court of Justice, in its July 2025 advisory opinion on the *Obligations of States in respect of Climate Change*, confirmed that states have due diligence obligations to regulate emissions-producing activities and that climate obligations should inform governmental decision-making across sectors, including energy planning and infrastructure development. The court found that states must exercise the highest possible ambition in their climate actions, and that a failure to do so – or regressive actions – may constitute wrongful acts for which they can be held legally liable. The Bill does not give effect to South Africa's duty to protect the climate from harm caused by GHG emissions.

6.4. It seeks to "facilitate investment in the gas industry"; and the "development of gas markets and gas facilities". Given that pipelines, LNG terminals, storage facilities and gas-fired power plants are typically designed to operate for several decades, the Bill risks entrenching harmful fossil gas infrastructure and delaying urgent emission reductions and investment in cleaner alternatives.

6.5. By creating an expanded regulatory framework for gas infrastructure, the Bill risks facilitating long-lived fossil gas investments without requiring decision-makers to assess stranded asset risks or long-term climate impacts. Although the Bill references renewable and low-carbon gases, it does not clearly distinguish between these and fossil gas in its regulatory approach. This also amounts to a failure to acknowledge South Africa's obligations under international law to take effective measures to prevent significant climate harm and to regulate GHG-emitting activities appropriately.

[1] *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others (39724/2019) [2022] ZAGPPHC 208 (18 March 2022).*

6.6. Clause 2 of the Bill sets out its objects. One of these includes to "promote the safe, efficient, economic and environmentally responsible transmission, storage, distribution, liquefaction and re-gasification of gas". Reference is also made to: "sustainable and orderly development and operation of gas transmission, storage, distribution, liquefaction and regasification facilities"; "efficient, effective and sustainable gas transmission, storage, distribution, liquefaction and re-gasification services"; and "competitive and sustainable trade in gas". Not a single reference is made to climate change.

6.7. The Climate Change Act requires, in section 7, that:

Every organ of state that exercises a power or performs a function that is affected by climate change, or is entrusted with powers and duties aimed at the achievement, promotion and protection of a sustainable environment, must review and if necessary revise, amend, coordinate and harmonise their policies, laws, measures, programmes and decisions in order to— (a) ensure that the risks of climate change impacts and associated vulnerabilities are taken into consideration; and (b) give effect to the principles and objects set out in this Act.

6.8. The Bill fails to comply with section 7 of the Climate Change Act.

6.9. The Bill references environmental protection as an objective, but provides limited guidance on how environmental risks, cumulative impacts, biodiversity or climate resilience should be weighed when licences are granted, amended or renewed.

6.10. It contains few mechanisms to ensure environmental considerations meaningfully influence licensing decisions. For instance, reference to the framework environmental legislation, the National Environmental Management Act, 1998 (NEMA) is very limited.

6.10.1 Clause 18(1)(w) states that the National Energy Regulator of South Africa (NERSA) "may make any licence subject to conditions within the following framework: the construction, operation of gas facilities and trading in gas contemplated in paragraphs (h) and (i) must not be inconsistent with section 24(2) of [NEMA]"; and

6.10.2 Clause 34 confirms that NEMA's section 2 principles "apply to all decisions and actions taken under this Act".

6.11. Section 24(2) of NEMA specifies empowers the Minister of Forestry, Fisheries and the Environment (or a provincial MEC, with the Minister's concurrence) to determine which activities and areas require environmental authorisation before they can begin. It also allows certain activities or areas to be exempted from this requirement under specified conditions.

6.12. The framing of clause 18(1)(w) – that the construction, operation of gas facilities and trading in gas should "<u>not be inconsistent</u>" with section 24(2) of NEMA is problematic. The Gas Bill establishes the regulatory framework for the gas industry, while NEMA continues to govern environmental decision-making and environmental authorisations. The Bill should make clear that, in all respects, compliance with NEMA's provisions is *required*.

6.13. Clause 27 deals with the gas master plan. The Bill treats the plan primarily as an energy and infrastructure planning instrument, rather than as an integrated environmental and climate planning instrument. However, the plan is a strategic decision with legal and environmental consequences – it will influence various gas-related decisions. That is why strategic environmental assessment, climate assessment and robust public participation is essential at the stage of developing the plan.

6.14. Clause 27(5) states that the gas master plan must address, *inter alia*, a "plan for the management of the environmental impacts of the gas industry". No other mention is made of climate or environmental assessments. These are crucial.

6.15. Section 2 of NEMA requires that development be environmentally, socially and economically sustainable and the Climate Change Act requires organs of state to exercise their powers consistently with national climate objectives. The Bill should expressly state that the gas master plan must be consistent with, for example: the National Climate Change Response framework; the Nationally Determined Contribution (NDC);[2] sectoral emissions targets; carbon budgets and GHG mitigation planning; and climate adaptation planning. Provision should also be made for made for the plan to consider, for example: the risk of stranded assets; alternative, lower-carbon technologies; cumulative impacts, pollution prevention, ecological integrity; the interests of present and future generations; and South Africa's international law obligations.

6.16. Rather than addressing environmental impacts only once individual projects seek licences, the legislation should require strategic assessment of, for example: suitable development corridors; environmentally unsuitable areas; cumulative regional impacts; interaction with protected areas and biodiversity priorities; climate resilience of proposed infrastructure; and alternative development scenarios.

6.17. Clauses 28 (regarding new gas facilities, services or gas supply) and 29 (strategic integrated energy projects) also fail to adequately integrate environmental sustainability and climate change considerations. Clause 28 should be amended to expressly require the decision-maker to consider environmental sustainability, including section 2 of NEMA, and climate considerations such as: physical climate risks; climate transition risks; stranded asset risks; lifecycle GHG emissions, consistency with South Africa's emissions reduction pathway and the just transition; carbon budgets and sectoral emissions targets before determining that new gas facilities, services or gas supply are required.

[2] Our NDC falls far short of the ambition required to meet South Africa's legal and international obligations, nor does it represent our fair-share in the global effort to limit warming to 1.5°C.

6.18. Clause 29 should require, *inter alia*: a strategic environmental assessment; the assessment of cumulative climate, biodiversity and socio-economic impacts; that consistency with the Climate Change Act, NEMA and at least with South Africa's NDC be demonstrated; transition planning and climate resilience measures.

6.19. We refer also to what is set out below in relation to these clauses.

6.20. Clause 34(3) provides that a licensee whose licence is surrendered or revoked and 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". This should be expressly extended to licensees or registrants who cease operations.

6.21. The Bill should be revised to make express provision for the need to take climate and other environmental considerations into account, including through detailed climate change impact assessments. All decision-makers exercising any powers in terms of the Bill must be explicitly required to act consistently with the Climate Change Act, NEMA, and the Constitution.

Public participation and access to information inadequate

6.22. The Bill must be amended to ensure meaningful public participation and access to information. As currently framed, it fails to give effect to the constitutional rights to fair administrative action and access to information.

6.23. The Bill fails to set out comprehensive public participation requirements comparable to those under NEMA's environmental impact assessment process. This will reduce opportunities for affected communities to engage with regulatory decisions that have environmental or climate implications. Given the growing body of litigation concerning oil and gas projects in South Africa, in which public participation and procedural fairness have featured prominently, the absence of robust participation requirements may expose licensing decisions under the Bill to increased legal challenge.

6.24. These inadequate public participation requirements are exacerbated by the Bill's express limitations on access to information.

6.25. In terms of clause 7(1) of the Bill, "no information obtained by [NERSA] in terms of this Act which is of a non-generic, confidential, personal, commercially sensitive or of a proprietary nature, may be made public or otherwise disclosed to any person, except for the purposes of complying with, or enforcing, the provisions of this Act, the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) [(PAIA)], the Protection of Personal Information Act, 2013 (Act No. 4 of 2013), or any other law, or in terms of an order of a High Court".

6.26. Clause 12(4) of the Bill permits an applicant for a licence to “request confidential treatment of commercially sensitive information contained in an application and subject to concurrence by [NERSA], such information may be withheld from publicly available copies of the application”. Clause 13(3) provides that an applicant cannot publish notice of the application until NERSA has decided whether or not to grant a clause 12(4) request.

6.27. In Clause 7(2) of the Bill, the NERSA is authorised “for purposes of complying with or enforcing this Act, [PAIA], the Protection of Personal Information Act, 2013, or any other law or in terms of an order of a High Court” to “make public or disclose to any interested person information which is of a generic, non-confidential nature and which is not commercially sensitive and which may be of interest to any person contemplating the construction of a gas facility or the operation thereof or contemplating trading in gas”.

6.28. This is an extremely convoluted provision. It is not clear whether it intends to provide for NERSA to make this information public to “any interested person” or only to “any person contemplating the construction of a gas facility or the operation thereof or contemplating trading in gas”. Nor is it clear if such information would be provided on written request, or only if a PAIA request is granted.

6.29. In our experience, including using PAIA, companies often claim that information is commercially sensitive or otherwise confidential to thwart requests for access to information in the public interest. These claims are generally not backed up by evidence, and are also, almost universally, accepted by regulators.

6.30. Interested and affected parties cannot meaningfully participate in licensing without the material information needed to understand a proposed project and its likely impacts.

6.31. All relevant information must be made public. This includes environmental monitoring data, emissions information and compliance records. The Bill should expressly include a strong presumption favouring disclosure of environmental, emissions or safety information that is of significant public interest.

6.32. Clause 13 should make express provision for the application documents to be available online - on the project proponent’s website and on NERSA’s website.

6.33. Clause 14(1) sets the bar for objecting to an application for a licence too high – only if rights are “materially and adversely affected”. This is inconsistent with the principles of lawful, reasonable and procedurally fair administrative action under the Promotion of Administrative Justice Act (PAJA), as well as the constitutional environmental right in section 24.

6.34. This threshold is considerably narrower than the public participation regimes found in South Africa's environmental legislation and risks excluding a wide range of persons and organisations with legitimate interests in the environmental, social and economic impacts of gas infrastructure. Environmental decision-making has consistently recognised broad public participation as an important constitutional value. None of the specific environmental management Acts limit the right to participate in this way – instead, they generally adopt an inclusive "interested and affected parties" approach. This is appropriate.

6.35. Many organisations possessing relevant scientific, environmental or technical expertise may not be able to demonstrate that their own rights are “materially and adversely affected”, yet their submissions may materially improve the quality of the decision. If participation is confined as proposed in the Bill, and depending on how this phrase is interpreted, decision-makers could also risk making decisions without local, indigenous and/or community knowledge. Material environmental, climate and social impacts will likely be overlooked.

6.36. The Bill appears to be attempting to importing the PAJA threshold for determining when procedural fairness obligations arise and converting it into a standing requirement for participation. These are distinct legal concepts. Section 3 of PAJA requires administrative action that materially and adversely affects the rights or legitimate expectations of any person to be procedurally fair. While PAJA establishes minimum procedural fairness requirements, it does not suggest that only persons whose rights are materially and adversely affected may participate in administrative processes. The fact that a person's rights may not yet be materially and adversely affected does not mean that the person's submissions are irrelevant to the decision-making process.

6.37. The current wording will also create practical difficulties and delays. Decision-makers would first have to determine whether an objector has established that their rights are materially and adversely affected before considering the substance of the objection. This is likely to become contentious and result in procedural challenges. Following the existing environmental licensing regimes by permitting interested and affected parties to submit comments, is administratively simpler and better supports informed decision-making. Once it is in possession of all relevant information, NERSA can determine the appropriate weight to attach to each submission.

6.38. The Bill should be amended to permit representations from any interested or affected party. It and/or NERSA Rules should also ensure that publication of an application is done in such a manner that such parties receive it – this includes: local communities, community-based organisations, traditional authorities, affected landowners and occupiers, and other organs of state. Notices should be accessible, understandable and provide for fair and reasonable commenting periods. Decisions on applications, including reasons, should be similarly published, together with information regarding appeal rights.

6.39. Clause 27(5) does not require meaningful public consultation during preparation or revision of the gas master plan. Given that the plan will influence future licensing decisions and infrastructure investment over many years, all stakeholders must have a fair and reasonable opportunity for input.

6.40. In addition to what has been set out above, meaningful public participation must also be ensured in relation to: decisions about whether an activity no longer requires licensing (clause 11) or should be registered (clause 23); the amendment of licence conditions (clause 20); the surrender of a licence (clause 21); the revocation of a licence (clause 22); the cancellation of registration (clause 26); draft determinations in terms of clauses 28 and 29; exemptions (clause 39).

<u>New gas and strategic integrated energy project provisions must be strengthened</u>

6.41. Clause 28 confers a broad discretion on the Minister to determine whether new gas facilities or supplies are required, with very few substantive constraints on the exercise of that discretion. The Explanatory Memorandum makes clear that the clause aims "to create maximum flexibility in terms of potential structures or procurement models for the establishment of gas or gas infrastructure". This framing makes clear that decisions risk being taken with incomplete information and against the public interest. For instance, no provision is made for the consideration of alternative, lower-carbon options or for determinations to be reviewed to reflect technological and climate developments.

6.42. The Bill must be amended to include the need for transparent criteria and reasons for determining that new gas infrastructure is required and for designating integrated energy projects.

6.43. Rather than identifying the relevant considerations that must inform the decision, clause 28 is framed primarily around issues such as demand, security of supply or market need, while omitting environmental sustainability, climate impacts, cumulative effects and alternatives. The Minister should have to demonstrate that new gas infrastructure is the least-cost, least-emissions, or least environmentally harmful option.

6.44. Environmental and climate issues must be considered at the same time as questions of energy security and economic need, rather than leaving them to later project-specific approvals.

6.45. Clause 29 also does not require decision-makers to consider South Africa's climate obligations, cumulative environmental impacts, alternatives to new gas infrastructure, or the risk of long-term fossil fuel lock-in. It must be amended to do so.

6.46. The clause is intended to align with the Infrastructure Development Act, whose purpose is to facilitate strategic infrastructure development. There is a serious risk that environmental, climate and public interest safeguards will become secondary to infrastructure delivery if these are not expressly protected.

6.47. The current formulation makes these clauses susceptible to review. Broad discretionary powers must be exercised transparently, rationally and consistently with constitutional environmental rights and statutory climate obligations. As set out above, there should also be meaningful public participation for clause 28 and clause 29 determinations.

NERSA's functions as a gas regulator

6.48. Clause 11 provides that, "The Minister may, after consultation with the Energy Regulator, by regulation determine any activity contemplated in section 10(1) as an activity that no longer requires a licence, from the date set out in such determination". The Explanatory Memorandum provides that this clause "is intended to eliminate red tape by empowering the Minister with tools to declare certain activities to be registrable activities in order to achieve security of supply when the need arises".

6.49. Clause 23(3) similarly provides for the Minister to determine other activities for registration "after consultation with" NERSA. Again, the Explanatory Memorandum states that the "licensing process might become an obstacle in achieving the strategic objectives and if energy security is threatened. The proposed insertion of clause 23 is intended to eliminate red tape by empowering the Minister with tools to declare certain activities to be registrable activities in order to achieve security of supply when the need arises".

6.50. It is inappropriate for these decisions to be within the exclusive powers of the Minister. NERSA, as gas regulator, should be a concurrent decision-maker: "after consultation with [NERSA]" should be amended to "in consultation with [NERSA]".

6.51. The failure to make provision for public participation also risks decisions being made "to eliminate red tape" without the benefit of relevant considerations and contrary to the public interest. This should be remedied.

Exemptions should only be permitted in highly exceptional cases

6.52. Clause 39 gives the Minister, in consultation with NERSA, a very broad discretionary power to exempt any person or category of persons from compliance with the Bill on grounds that include: national security, strategic or economic interests, and to discharge an international obligation. The Minister also has broad discretion regarding the "terms and conditions" of an exemption.

6.53. None of these conditions for exemption is defined in the Bill and it is not clear what any of them entails. No provision is made for the publication of evidence to support the exemption decision; the implications of the decision; or reasons the exemption was appropriate. All of these should be provided. For the reasons set out above, it is also essential that there be meaningful public participation before any exemption decision is made.

6.54. Clause 39 undermines the entire regulatory framework. Because it is so vague and broad, there is a strong risk that it could be used to circumvent licensing and/or compliance requirements. There is also no provision made for, for example: termination dates for exemptions; reviewing and reassessing exemptions; or monitoring any conditions of exemptions.

6.55. An extremely circumscribed exemption mechanism may be justified in exceptional circumstances, but clause 39 fails to include necessary substantive or procedural safeguards. As with other provisions of the Bill, it does not require consideration of environmental or climate impacts, compliance with NEMA or the Climate Change Act, public participation, or the publication of reasons.

6.56. No exemption should be permissible if it undermines constitutional rights, NEMA, the Climate Change Act or the country's climate commitments.

6.57. As currently formulated, clause 39 is susceptible to review under the constitutional principle of legality and PAJA.

7. **Conclusion**

7.1. Just Share calls for the revision of the Bill to address these concerns.

7.2. We also reiterate our request for the Portfolio Committee and the Department to ensure that all submissions on the Bill are made public.

7.3. Please contact us, should you have any questions about our comments.

Yours faithfully
JUST SHARE

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