

ESERA Licensing Framework

Licence Application Review Guidelines

(Liquefied Petroleum Gas)

By

The Eswatini Energy Regulatory Authority



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INTRODUCTION TO THE GUIDELINES

These guidelines provide a framework for the evaluation of licence applications by the Eswatini Energy Regulatory Authority (ESERA). The guidelines form part of a broader energy sector licensing framework. Such framework is guided by the Petroleum Act of 2020 as well other applicable policy documents guiding the sector.

Although the guidelines provide guidance and direction for both licence applicants and ESERA, they should not be considered the de facto reference for application reviews and the granting of licences; rather they are intended to provide a high-level overview of the key issues and areas that need to be evaluated in order to assess the validity and completeness of licence applications.

These Liquefied Petroleum Gas licence application review guidelines should be read in conjunction with the following associated documents:

Petroleum Act 2020

Liquefied Petroleum Gas Regulations

Prescription of Licence Fees Notice 2021

Licence Application Forms

In considering and evaluating licence applications, ESERA must assess the business/project in terms of commercial, financial and technical viability as well as the socio-economic value to Eswatini and must gauge whether the project is ultimately in the best interests of the country, the Petroleum and gas sector end-users.

As such the guidelines cover the following key issues that should be taken into consideration during the licence review process.

- 1) Administrative Requirements
- 2) Policy Environment
- 3) Legal & Regulatory Environment
- 4) External Regulatory approvals
- 5) Licence Details
- 6) Company Profile & Standing
- 7) Commercial Requirements
- 8) Technical Requirements
- 9) Environmental Requirements
- 10) Other Permits & Authorisations
- 11) Socio-economic Information

- 12) Objectors and Intervening Parties
- 13) Other Considerations & Guidelines

These issues are spelt out in more detail below.

ADMINISTRATIVE

ESERA provides licence application forms for downstream petroleum activities as outlined in the Petroleum Act 2020 namely: Wholesale, Retail, Commercial Consumer, Distribution, Storage, Blending, Liquefied Petroleum Gas (LPG), Compressed Natural Gas (CNG), Liquefied Natural Gas (LNDG) and Petrochemical licenses on their website¹. These forms provide the applicant with the minimum requirements which they are required to meet when applying for a licence.

Comment	
Timing	<p>ESERA shall consider an application for the issue, renewal, amendment or variation, transfer as well as the surrender of a licence within 90 days from the publication of the related advertisement.</p> <p>ESERA may further more suspend or revoke a licence previously granted upon violation and non-compliance of certain licence conditions.</p>
Completed Application Form	<p>As a minimum requirement the applicant must have fully met the requirements laid out in the licence application forms provided by ESERA on their website.</p>
Licence Application Fee	<p>The applicant must provide proof of payment of the licence application fee.</p> <p>The prescribed application fees are specified in the Prescription of Licence Fees Notice, 2021.</p>
Contact Details	<p>The applicant must provide valid contact details for any queries and or a notification of decision(s) on the licence application.</p>
Advertisement	<p>The wholesaler must advertise in at least one newspaper circulating in Eswatini an advert detailing amongst other things the name of the applicant, general nature, location of the area concerned and any other particular information the Authority deems fit for wider public participation in any decision-making process for licencing related activities.</p>

POLICY REQUIREMENTS

The licence application must be aligned with relevant sector policy.

LEGAL & REGULATORY REQUIREMENTS

Any licence application shall be conducted according to the legislation, regulation and rules as described in the following documents.

Comment	
Legislation & Regulation	<p>The relevant legislation and regulation governing the licensing application review process are:</p> <ol style="list-style-type: none">1. Petroleum Act, 2020 (ACT No. of 2020).2. Liquefied Petroleum Gas Regulations3. Prescription of Licence Fees Notice 2021
Standards	<p>The service standards and quality of petroleum supply to be maintained by licensees are governed by:</p> <ol style="list-style-type: none">1. SZNS SANS 10087-7:20072. SZNS SANS 10087-1: 20083. SZNS SANS 10087-3:20084. SZNS SANS 10087-4: 20115. SZNS SANS 10087-6: 20066. SZNS SANS 10087-7:20077. SZNS SANS 10087-8: 2006

LICENCE DETAILS

A licence application can be for the issue, renewal, amendment and variation, transfer and surrender of a licence for downstream petroleum activities as outlined in the Petroleum Act 2020. It is therefore important to determine the context of the licence application.

Comment	
Type of Licence	<p>Applicants must specify which licence they are applying for:</p> <p>(Wholesale Licences, Retail Licences)</p> <p>Applicants shall also state whether this is a new issue, a renewal an amendment or variation, transfer or surrender of a licence. New licence applications will require relatively more effort in evaluation than a renewal (for example).</p> <p>Wholesalers are eligible to apply for a retail license</p> <p>For retail operations:</p> <ul style="list-style-type: none"> • Exchange all sizes • Refilling only restricted to the use of 48kg and above • Sizes from (0-9)kg can be sold without any obligation, while for sizes ranging from (19 kg) a retailer shall be required to ensure installations are certified
Conditions for Licenses	<ul style="list-style-type: none"> • All wholesale and retail sites shall be branded • Each brand will be site specific • All LPG installations must be undertaken by certified installers for all installation types • Wholesalers and retailers have the obligation to ensure customers with cylinders ranging from 19kg have certified installations • All wholesalers shall ensure that all retailers with refilling facilities: <ul style="list-style-type: none"> • Proper and Functional equipment • Calibrated • Are trained on the use of the refilling equipment

	<ul style="list-style-type: none"> • All retailers shall make sure that there is: <ul style="list-style-type: none"> ○ Proper signage ○ Fire fighting equipment ○ Concrete slabs ○ Adequate ventilation ○ Employees wear necessary PPE at all times ○ Adequate health and safety training
<p><u>Criteria For Installer Certification</u></p>	<p><u>The shall be three types of installers recognized by the authority as follows:</u></p> <ol style="list-style-type: none"> 1. <u>Domestic installer</u> 2. <u>Commercial installer</u> 3. <u>Industrial installer</u> <p><u>The following criteria shall apply for the above-mentioned installers:</u></p> <ol style="list-style-type: none"> 1. Domestic Installer <ol style="list-style-type: none"> a. Successfully completed RESIDENTIAL INSTALLER Course. b. Undergone Mentorship Programme under a certified Installer for at least 4 installations. c. Affiliated with the relevant professional body (LPG sector) 2. Commercial Installer <ol style="list-style-type: none"> a. Successfully completed a COMMERCIAL INSTALLER Course. b. Undergone Mentorship Programme under a certified installer for at least 4 installations. c. Affiliated with the relevant professional body (LPG sector). 3. Industrial Installer <ol style="list-style-type: none"> a. Successfully completed INDUSTRIAL INSTALLER Course. b. Undergone Mentorship Programme under a certified Installer for at least 4 installations. c. Affiliated with the relevant professional body (LPG sector). <p>Upon meeting the above, the potential installer shall apply to obtain a certification from the Regulator.</p>

Date of Licence	<p>Applicants must state from what date the licence is required as well as the validity sought.</p> <p>The maximum period for the validity of a licence type is specified in the relevant application form.</p>
Nature and Scope of Licensed Operations	<p>As a minimum requirement, the applicant must motivate and substantiate why they need the licence.</p> <p>ESERA will then need to determine if the licence application is adequate for the nature of the intended operations of the licensee.</p>
Record of Decision on Previous Licence Applications	<p>It is important to evaluate the credibility of the parties applying for any licence in order to determine their ability to successfully develop and manage the intended project.</p> <p>If requested by ESERA, applicants must present previous records of decisions, where relevant, in order to examine their relevance on this particular licence application.</p>
Other Licences Currently Held	<p>As above, if requested by ESERA, applicants must provide a reference for their credibility by detailing other licences currently held.</p> <p>Where relevant competition issues should be considered by ESERA.</p>
Licence Validity	<p>In order to support the successful development of projects, licences will be awarded with some condition's precedent (or lapsing conditions).</p> <p>With regard to construction, the licence rights and obligations will be suspended until all of the lapsing conditions set out in the application</p>

	<p>(regarding the construction phase) of the project have been met or waived.</p> <p>With regard to operations, the applicable rights and obligations associated with the facilities will be suspended until the lapsing conditions for operations as laid out in the licence application have been met or waived.</p> <p>These lapsing conditions shall be clearly detailed in the licence application response from ESERA.</p> <p>The maximum validity period for various licence types is as follows:</p> <ul style="list-style-type: none"> • Wholesale Licence: 5 years • Retail Licence: 3 years
Inspections	<p>Licencing</p> <p>ESERA shall designate inspectors who shall assist in the exercise of any power or function conferred under the Petroleum Act 2020.</p>

EXTERNAL REGULATORY APPROVALS

Comment	
External Regulatory Approvals	<p>Any licence applications for transactions with counterparties outside of Eswatini must provide proof of approvals and legal compliance from the relevant authorities in those geographies.</p> <p>The applicant must commit to notify the Regulator of:</p> <ul style="list-style-type: none"> • any major problems that may result in termination or re-negotiation of a cross-border agreement. <p>ESERA commit to take all necessary advice from appropriate external national authorities and SACU.</p>

COMPANY PROFILE AND STANDING

In order to undertake sufficient due diligence on the licence application, it is critical to determine exactly who the relevant parties to the transaction are. The nature of certain projects will require a fairly complex project structure in order to allocate risk appropriately. However; it is important that the project is not structured in a way that prejudices the viability of the project or avoids any taxes, customs, duties etc. Complex cross-ownership structures are also to be vetted to ensure that they do not mask excessive project returns which will raise the overall cost of supply to the detriment of end-users.

Comment	
Corporate Structure, Shareholding and Cross Ownership	<p>ESERA must determine who the various entities involved in the project are, their share of equity and cross-ownership.</p> <p>Applicants shall be requested to provide a diagram laying out the various entities and shareholdings in order to allow ESERA to assess the structure.</p> <p>Proof of ownership and directorships within each entity should also be provided.</p> <p>Applicants must demonstrate that they have met all of Eswatini's legal requirements regarding land and company ownership.</p>
Details of Incorporation, Partnership, Trust or Joint venture	<p>The project structure must be complemented with all details of incorporation documents including shareholder agreements, registers and any other relevant documentation regarding the structuring of partnerships, trusts and joint ventures that have any holding in the project.</p>
Operations, Organisational Structure & Governance Policy	<p>It should be clearly detailed which entity within the project structure will be responsible for operations of the project. The organisational structure and governance policy of the operating entity applying for the licence should be clearly laid out including CVs of key personnel.</p>
Tax clearance & VAT	<p>As a minimum due diligence requirement: Tax clearance and VAT certificates must be provided by all relevant entities for existing operations.</p>

COMPETENCY IN INSTALLATION

It is crucial that licences are awarded to those applicants that can prove competency and their ability to deliver in order to ensure that projects are delivered on time and managed efficiently. ESERA should where possible avoid the possibility of having to revoke a licence previously issued due to poorly constructed facilities.

Comment	
Risk Management Policy, HSE	A Health, Safety and Risk Management policy for wholesale license applications are considered as a minimum part of the documentation required for a licence application. These should be up to date and written by the operational entity with professional support.
Installers	<p>For the purposes of regulation, installations are classified into (3) types. The different types of installers shall be certified by an entity to be approved by the Regulator.</p> <p>Industrial Installations:</p> <p>Commercial Installations:</p> <p>Household Installations:</p> <p>All installers must show affiliation to the relevant professional body in the industry.</p>

COMMERCIAL REQUIREMENTS

The commercial feasibility of the applicant's project is in large part determined by the evaluation of its commercial viability.

Comment	
Supply Agreement (SA)	<p>The applicant must provide either a signed contract or a signed binding Heads of Terms (HoT) with supplier.</p> <p>The SA will outline the exact terms of the supply arrangements including: source, volumes, quality as well as frequency of supply.</p> <p>The SA should be compared with assumptions on the technical feasibility, financial models.</p>
Approval for land use	<p>Proof that the applicant has approval for the use of land for the intended purpose must be provided.</p> <p>If applicable, the lease should be assessed in terms of its legal validity and term.</p> <p>For a retail licence application, approval from the local authority will be required i.e (Municipal Approval, Kings Consent).</p>
Business Plan	<p>The applicant's corporate strategy or business plan may be provided in the company's annual reports. Where this is not the case, the applicants should provide a business plan detailing the market strategy and a five-year business plan as a reference for credibility.</p>
Audited financial Statements	<p>For existing wholesale licence applications audited financial statements, shareholder's registers and other financial documents should be submitted for due diligence and to prove financial viability. These should include audited cash flow statements, income statements & balance sheets.</p> <p>For new applicants, the relevant projections on cashflows and capex should be provided.</p>

TECHNICAL REQUIREMENTS

Once the project has been assessed for commercial viability, it is important to ensure technical feasibility.

Comment	
Geographical Location	The location of the project, including GPS co-ordinates surrounding terrain and other places of nearby interest should be detailed in the licence application. It is common practice to provide a map as well as images of the site itself.
Facility Technical Design	At application stage, draft preliminary designs of the facility must be provided by the applicant.
Maintenance Program, Decommissioning Plan & Costs	<p>The ongoing viability of the facilities can be evaluated by assessing the adequacy of the maintenance program. A decommissioning plan and cost estimate must also be provided for – both the maintenance and decommissioning program should be compared with the estimates in the financial model.</p> <p>Upon decommissioning, it is the responsibility of the wholesaler to dispose of the equipment used in a manner that will be safe and wont be hazardous or degrade the environment.</p>

ENVIRONMENTAL REQUIREMENTS

An environmental assessment is considered a potential critical flaw for any energy project.

Existing entities shall undertake environmental audits and obtain the necessary environmental certificates.

A new licence application must contain a record of decision from the Eswatini Environment Authority which could include categorization, authorization or approval. It must further be noted that an official letter from the Environmental Authority, authorizing the licensee to proceed with the project will be accepted in certain cases.

Where relevant, compliance with other environmental policy, legislation and regulations should be assessed for e.g., spillages and emissions into neighbouring areas and carbon taxation.

OTHER PERMITS AND AUTHORISATIONS

Project viability will be underpinned by a variety of commercial agreements and permissions. Licence evaluation should at a minimum ensure that the following other agreements (than

those already mentioned above) are included and valid. The evaluation must ensure appropriate allocation of risk, recourse and damages.

Comment	
Other Agreements	Various local government permissions, water availability, water use, land use (servitudes), waste disposal clearance must be made available to the licence evaluator. Fire Services Approval of the facility designs

SOCIO-ECONOMIC INFORMATION

Licence applicants should detail the projected socio-economic benefit to Eswatini in terms of the following criteria:

1. Jobs created (Part and Full time)
2. Foreign Direct investment
3. Tax revenue
4. Local community benefits

OBJECTORS AND INTERVENING PARTIES

Any person desiring to object to an application advertised may, within 14 days from the date of publication of an advertisement, comment on or lodge a written objection against such application with the Authority. The Authority must assess any objections to the project and determine whether or not they have been adequately addressed.

OTHER CONSIDERATION & GUIDELINES

The evaluation process provides various other options that should be considered when undertaking an evaluation, as detailed below:

Comment

Guiding Principle	<p>ESERA must consider the following key questions when making a licence application:</p> <ol style="list-style-type: none">1. Has ESERA acted in a manner that is transparent and fair, with due regard to the rights of the applicant to be heard?2. Does this project promote an efficient, reliable and economic system of petroleum downstream activities in Eswatini?3. Does the awarding of this licence enable all reasonable demands for petroleum to be met?4. Is the licensee able to finance the carrying out of their licensed activities?5. Is the awarding of this licence in the interests of end users?6. Do the licensees have regard for safety, health and the environment?7. Do the licensees comply with all relevant legislation and regulation?
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