

ESERA Licensing Framework

Licence Application Review Guidelines

(Petroleum)

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 petroleum licence application review guidelines should be read in conjunction with the following associated documents:

Petroleum Act 2020

Petroleum 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 on violated of certain licence conditions</p>
Completed Application Form	As a minimum requirement the applicant must have fully met the requirements laid out in the licence application form provided by ESERA on their website.
Licence Application Fee and License Fees	<p>The applicant must provide proof of payment of the licence application fee.</p> <p>The prescribed application fees are specified in the Licence Fees Notice 2021.</p>
Contact Details	The applicant must provide valid contact details for any queries and or a notification of decision(s) on the licence application.
Advertisement of application	<p>With the exception of the following licenses, all other applications for license issue shall advertise in at least one newspaper with wide circulation in Eswatini. This shall be for two days within a week.</p> <ul style="list-style-type: none"> • Permits • Commercial Consumer <p>The advert shall specify the following: the name of the applicant, general nature of the application, location of the area concerned and any other</p>

¹

	<p>particular information the Authority deems fit for wider public participation in any decision-making process.</p> <p>The Regulator shall exercise discretion on the need to advertise the following licence activities:</p> <ul style="list-style-type: none"> • Renewal • Variation
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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 2. Petroleum Regulations 3. Prescription of Licence Fees Notice 20121
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 016:2011 Unleaded petrol 2. SZNS 017:2011 Automotive diesel fuel 3. SZNS 0420-1:2014 The petroleum Industry Part1: Storage and distribution of petroleum products in above-ground bulk installations.

	<p>4. SZNS ISO 4259:2006 Petroleum products – Determination and application of precision data in relation to method of test</p> <p>5. SZNS 018:2014 Kerosine for domestic heating and illuminating</p>
	<p>6. SZNS 019: 2012 Standard specification for denatured fuel ethanol for blending with gasoline for use as automotive spark- ignition engine fuel.</p>
	<p>7. SZNS 054: 2017 Standard specification for 10 volume % Ethanol Gasoline Blend for Use as Automotive Spark-Ignition Engine Fuel</p>
	<p>8. SZNS SANS 1935:2011 Automotive biodiesel – Fatty Acid Methyl Esters (FAME) for diesel engines – Requirements and test methods</p>
	<p>9. SZNS SANS 10089-2:2007 The petroleum industry Part 2: Electrical and other installations in the distribution and marketing sector.</p>
	<p>10. SZNS SANS 10089-3 : 2007 The petroleum industry Part 3: The installation, modification and decommissioning of underground storage tank, pumps/dispensers and pipe work at service stations and consumer installation.</p>
	<p>11.</p>

ALL OTHER RELEVANT STANDARDS WILL BE CONSIDERED.

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	Applicants must specify which licence they are applying for (i.e., Wholesale, Retail, Commercial Consumer, Distribution, Storage, Blending or Petrochemical licence).

	<p>Applicants shall also state whether this is a new issue, a renewal an amendment or variation, transfer or surrender of a licence.</p> <ul style="list-style-type: none"> • The wholesale licensee shall not apply for and hold a retail licence. • Retail licences shall only be reserved for Indigenous Swati Companies <p>Indigenous LiSwati</p> <ul style="list-style-type: none"> • is a living descendant of inhabitants that were there before Eswatini was invaded or dominated by colonial forces <p style="text-align: center;"><i>OR</i></p> <ul style="list-style-type: none"> • Should have at least <i>one parent</i> of Swati citizenship as defined by the Constitution Kingdom of Swaziland Act 2005 <p>Indigenous Swati Company</p> <p>A company is deemed to be an indigenous company if that company—</p> <p>(a) has indigenous Swati citizens who hold more than one half of its issued share capital;</p> <p>(b) has indigenous Swati citizens forming the majority of its shareholders who have control over the placement of the Board of Directors; and</p> <p>(c) has indigenous Swati citizens forming the majority of its Board of Directors.</p> <p>(d) All other shareholders must hold a Swati citizenship</p>
	<p>Transfer</p> <p>In the event there is a complete change of ownership in the licensee, a licence transfer application will be required.</p> <p>Variation/ Amendment</p> <p>In the event there is variation in operation that changes certain particulars with the exception of a transfer, a license variation/ amendment will be required.</p>

<p>Date of Licence</p>	<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>
<p>Nature and Scope of Licensed Operations</p>	<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>
<p>Record of Decision on Previous Licence Applications</p>	<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>
<p>Other Licences Currently Held</p>	<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>
<p>Licence Validity</p>	<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 (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: 15 years

	<ul style="list-style-type: none"> • Retail Licence: 10 years • Commercial Consumer: 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 renegotiation of a cross-border agreement. <p>Furthermore, the applicant must prove that the resources that will be used for the proposed cross-border transaction(s) are not needed to meet forecast domestic demand, or if the resources are needed to meet forecast domestic demand there is no immediate prospect of a domestic buyer or buyers entering into transactions that are, in aggregate, of comparable size and on similar terms to the proposed cross-border transactions.</p> <p>ESERA commits 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 applicant, 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	
<p>Corporate Structure, Shareholding and Cross Ownership</p>	<p>ESERA must determine who the various entities involved in the project are, their share of equity and cross-ownership.</p> <p>Cross-ownership in value chain activities is not permitted particularly for fuel wholesale and retail</p> <p>Applicants should 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> <p>The holder of a wholesale licence shall not apply for and be granted a retail licence. To avoid potential conflict of interest, an employee of a wholesaler shall not be allowed to retail for the same wholesaler.</p>
<p>Details of Incorporation, Partnership, Trust or Joint venture</p>	<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</p>

	partnerships, trusts and joint ventures that have any holding in the project.
Operations, Organisational Structure & Governance Policy	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.
Tax clearance & VAT	As a minimum due diligence requirement: Tax clearance and VAT certificates must be provided by all relevant entities.

COMPETENCY IN CONSTRUCTION & OPERATION

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 issues due to poorly constructed facilities.

Comment	
Construction	<p>The applicant must demonstrate that it has firm arrangements in place with a competent Building Contractor registered with the Construction Industry Counsel (CIC) for the design and construction of the proposed facilities.</p> <p>For retail license applications, a Memorandum Of Understanding, signed contract or a signed binding Heads of Terms (HoT) with the counterparty. This document outlines the nature of the contractual relationships that govern the construction of the facilities. The EPC contract should match the timing and Capex assumptions in the financial model as applicable.</p> <p>The contractor must demonstrate that it has designed and constructed exactly the equivalent or similar projects previously, in terms of scope, scale and technology.</p> <p>Applicants must provide references for at least three other equivalent projects.</p>

	The contractor must provide proof of adequate project insurance and financial standing.
Experience and knowledge of industry, other project under development, current project operations	<p>Alongside the organisational structure and CVs mentioned above, it is incumbent on the applicant to outline relevant project experience for all participants in the project structure. An experienced project team is more likely to develop a successful project.</p> <p>The applicant should also present an outline of other projects under development and any projects currently in operation.</p>
Operations & Maintenance (O&M)	The applicant must demonstrate that they have a signed contract or signed binding HoT with the supplier where relevant.
Insurance	The applicant must demonstrate that it has adequate insurance via a signed contract or signed binding HoT with an insurer.
Risk Management Policy, HSE	Health & Safety and Risk Management policy 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 – unfortunately many applicants often do not see the relevance of these operational documents and “copy & paste” them from other companies.

COMMERCIAL REQUIREMENTS

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

Comment	
Fuel Supply Agreement (FSA)	<p>The applicant must provide either a signed contract or a signed binding Heads of Terms (HoT) with supplier.</p> <p>The FSA will outline the exact terms of the fuel supply arrangements including: Source, Volumes, Types and Quality as well as Frequency of Supply.</p>

	<p>The FSA should be compared with assumptions on the technical feasibility and financial models.</p>
Proof of land ownership	<p>Proof of land ownership or long-term commercial leases, should be considered as one of the key documents.</p> <p>The applicant must provide either a signed contract or a signed binding HoT with a valid commercial counterparty.</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>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> <ul style="list-style-type: none"> • For wholesale licence, audited financial statements for the previous financial year will be expected to accompany the application • For retail licence draft financial statements will be accepted to accompany the application, it is also necessary to present forecourt separately from other revenues (i.e. convenience store)

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 coordinates 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 project site itself.
Facility Technical Design	At application stage, preliminary technical feasibility study for the project should be provided, addressing the following key sections: Plant Technology & Specs, Preliminary Engineering Design, Construction Plans, Environmental issues, and Geology, Hydrology and Logistics
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 will not be hazardous or degrade the environment.</p>

ENVIRONMENTAL REQUIREMENTS

An environmental assessment is considered a potential critical flaw for any energy project. The licence application must contain a record of decision from the Eswatini Environment Authority (which could include categorisation) as well as the Environmental Impact Assessment (EIA) submitted. It must further be noted that an official letter from the Environmental Authority e.g. (environmental categorization), authorising 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.

Security against damage to the environment

On licence approval, an applicant will be required to lodge the necessary security against damage to the environment with the Regulator. The security should be in the form of an insurance bond.

The quantum for which will be determined by the Regulator and will be commensurate with prevailing environmental rehabilitation costs.

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.

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 30 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?

TRANSITIONAL CLAUSE

Existing market participants will be deemed to hold a license and will be required to make an application within 8 months from the effective date of the Petroleum Act 2021.