

**IN THE ESSENTIAL SERVICES COMMITTEE  
HELD AT JOHANNESBURG**

**Case No.: ES 121**

**In re: Investigation in terms of Section 71 of the Labour Relations Act, 66 of 1995:**

**Whether Reticulation of Natural Pipe Gas should be designated as essential services.**

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**Designation**

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**Introduction**

1. The Essential Services Committee (“the ESC”) received a referral from Egoli Gas in terms of section 71 of the Labour Relations Act, 66 of 1995 (“*the LRA*”).
2. In its referral, the Egoli Gas sought a determination to the effect that Egoli Gas should be declared as an essential service provide.
3. A preliminary meeting between the ESC and the parties was held and the ESC after considering the nature of the submission concluded that the request was reasonable, and took a decision to conduct an investigation in terms of Section

71 read with Section 70(2) (a) of the Labour Relations Act 66 of 1995 as amended (hereinafter referred to as the Act).

4. The gazetted terms of reference for the investigation in terms of section 71 were” **Notice is hereby given in terms of section 71, read with section 70(2)(a) of the Labour Relations Act, 1995 (Act No 66 of 1995 as amended), that the Committee is in the process of conducting an investigation as to whether reticulation of natural gas is an essential service.** (see Government Gazette No 41256, Volume 629 Of 2017, dated 17 November 2017), This notice was also published on the Sunday Times newspaper dated 12 November 2017.

### **Details of Hearings**

5. The hearings were scheduled as per the notice published in the government gazette (GN 41256), and also in the Sunday Times of 12 November 2017. In the hearing the ESC received written submissions from the applicant and the applicant also made oral submissions. There were no opposing submissions received.

### **Submissions**

6. The applicant in this matter submitted that it is a member of Reatile Group. In 2000 Gas Works which was responsible for reticulation of Gas was sold to Egoli Empowerment Holdings. This was acquired by Reatile Resources in 2013. Prior to this acquisition, in 2004/5 the mode of producing gas was converted from hydrogen rich coal to methane rich gas.
7. The applicant submitted that it provides the service of reticulation of natural gas through the underground pipeline within the Greater Johannesburg Metropolitan area. It has six (6) inlet stations and 42 regulator stations.

8. The pipeline is the only route to the market.
9. The applicant employs 117 employees and of these 49 employees are operations staff, 8 are leak detectors, eight work in the control room and 39 are in administration 7 and are in management.
10. The applicant explained the difference between distribution and reticulation of gas and submitted that it does not distribute gas but offer reticulation services which includes transmission of natural gas through the underground pipeline network covering 1,200 km within the greater Johannesburg Metropolitan Area.
11. The applicant submitted that natural gas is transported through the gas pipes from Mozambique and that in this state one cannot smell it. It is transported to the Sasol Gas Plant where sulphur is added to give a smell. This is where Reatile / Egoli gas would transport it for domestic use.
12. Egoli group is responsible for the maintenance of the pipeline and ensuring that there are no leaks as if the leaks are not detected and attended timeously that could endanger lives, personal safety and health of the population of Johannesburg, as that is where the applicant has the pipeline network.
13. The applicant further submitted that it supplies hospitals, private residences and Hostels under municipal control with gas.
14. Most hospitals have moved away from using coal as a source for sterilizing the boilers and are now using gas and they rely on the network. In relation to the hostels it was submitted that the residents of these hostels including Alexander hostel rely on gas to cook and bath and for heating purposes. An example was made of an incident where there was an interruption and this led to protest.
15. The applicant sought a designation that would cover all its operations and staff and submitted that in the event of a leak they require all employees including

administrative staff as these employees would ensure that there is food for the employees who are responsible for maintenance.

## **Legal Framework**

16. In this matter the issue that the committee has to determine is whether the services that the applicant is rendering should be designated as essential services? In determining the matter, it is important that one should set out the legal framework.
17. Section 23(2) of the Constitution of the Republic of South Africa, 1996 (*“the Constitution”*) states that... *“Every worker has the right ... (c) to strike.”*
18. Section 36 (1) of the Constitution states inter alia that... *“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.*
19. Section 65 (1) (d) (i) of the LRA states that ... *“No person may take part in a strike ... if that person is engaged ... in an essential service”.*
20. An ‘essential service’ is defined in section 213 of the Act as:
  - (a) *a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;*
  - (b) *the Parliamentary service;*
  - (c) *the South African Police Service”.*

41. The Constitutional Court in **South African Police Service V Police and Prisons Civil Rights Union and Another (CCT 89/10)** said the following: -

“In order to ascertain the meaning of essential service, regard must be had to the purpose of the legislation and the context in which the phrase appears. An important purpose of the LRA is to give effect to the right to strike entrenched in section 23(2)(c) of the Constitution. The interpretative process must give effect to this purpose within the other purposes of the LRA as set out in Section 1(a). The provisions in question must thus not be construed in isolation, but in the context of the other provisions in the LRA. For this reason, a restrictive interpretation of essential service must, if possible, be adopted so as to avoid impermissibly limiting the right to strike (footnotes excluded)”

21. It is trite that strike action is an important element of collective bargaining and it is recognised as a primary mechanism through which workers exercise collective power (See ***Ex-Parte Chairperson of the Constitutional Assembly in re: Certification of the Constitution of the Republic of South Africa, 1996 (4) SA744 (CC) at paragraph [66]***).
22. Having regard to the above, it is clear that our law requires essential services to be restrictively interpreted, and that this means, *inter alia*, the following:
  - It is the service which is essential, not the industry or the institution within which the service falls;
  - Only those employees who are truly performing an essential service, may be prohibited from striking; and
  - Essential and non-essential service workers may be found working side by side in the same institution.
23. Before the ESC can designate any service as essential, it must be satisfied that the interruption of the said service is likely to to endanger life, personal safety or health of the whole or part of the population.

24. It is further trite that in view of the fact that the right that would be affected by such a designation limits or takes away a fundamental right, such designation must be reasonable and justifiable. Thus if the ESC finds that parts of the service are not essential the Committee is obliged not to designate such services, as such a designation would be unreasonable and unjustifiable.

### **Analysis of Evidence**

25. The applicant in this matter sought a blanket designation in that it sought all services to be designated as essential services. As indicated above it is not an institution that is essential but it is the services rendered by an institution that are essential. It is also important to state that if the service of reticulation of gas is designated as essential, the designation would not only apply to the applicant but any other institution or employees rendering that service.

26. During the hearing the applicant indicated the services rendered by its employees and indicated that they all play a critical role in the reticulation process. Further that in the event of a leak they need all human resources including the administrative staff and sales staff.

27. As one cannot designate the institution, the ESC in determining this matter considered all the positions and the role of such position in ensuring that there is no endangerment to life personal safety and health. From the evidence the following services were identified.

- Maintenance services
- Administrative Services
- Finance
- Sales, and
- Management

28. As indicated the test that the ESC adopts in determining whether a service is essential is whether the interruption of that service would endanger the health, life and safety. Where the interruption of a service would cause inconvenience or economic hardship, such a service cannot be designated as an essential service.
29. On the submissions it is clear that administrative services and financial services are important for the efficient running of the operations. However, these services are not essential as, if they are interrupted there will be no endangerment to life, personal safety or health.
30. In its submissions the applicant submitted that if the services are interrupted it would not be able to supply gas to the hostels and public hospitals. Further that most hospitals in Gauteng have moved to using gas as a source of energy for the boilers. **Boilers** are an essential part of **hospitals**, and the steam provided by these **boilers** is utilized in a variety of applications, including equipment sterilization, hot water heating and heating **hospital** buildings.
31. The question that arises is whether reticulation is the only method available to supply gas to the hospitals. It appears that whilst there are other methods of supplying gas to the hospitals, e.g. distribution, the feasibility of supply would depend on the infrastructure. Thus where the pipeline was built for purposes of supplying gas it may be impossible to change the infrastructure within a short period to allow for supply through distribution. Many of the services rendered at public hospitals including the boilers are already declared essential and the panel accepts that the proper functioning boilers are critical in a hospital.
32. The argument that gas is supplied to the hostels for cooking and other purposes is not persuasive.
33. The applicant demonstrated through a map its pipelines and it appears that there are gas pipes running underneath the entire city of Johannesburg. The

uncontroverted evidence is that if there is a leak this would endanger the lives, personal safety or health of the whole or part of the population of Gauteng. The same danger may be posed anywhere, where there is such pipeline. The applicant submitted that the function of its maintenance officers is to monitor, detect and fix such leaks. This service is essential as if the gas pipeline is not monitored and leaks are not repaired this may lead endanger the lives and safety of the population. The same can be said for services rendered by the leak detectors and control room staff.

34. Having considered the written and oral submissions of the parties, as well as the applicable law referred to above, the Panel is of the view that reticulation of natural gas should be designated as an essential service and this excludes sales, administrative and management staff.

## **9. Designation**

The ESC Panel therefore designates reticulation of natural gas services as an essential service.



**Ms. Joyce Nkopane**  
**ESC Panel Chairperson**  
**04 May 2018**