

# PETROLEUM AND NATURAL GAS REGULATORY BOARD

## NOTIFICATION

New Delhi, the 17<sup>th</sup> July, 2008

**G.S.R. 540(E).**— In exercise of the powers conferred by section 61 of the Petroleum and Natural Gas Regulatory Board Act, 2006 (19 of 2006), the Petroleum and Natural Gas Regulatory Board hereby makes the following regulations, namely:-

### 1. Short title and commencement.

- (1) These regulations may be called the Petroleum and Natural Gas Regulatory Board (Affiliate Code of Conduct for Entities Engaged in Marketing of Natural Gas and Laying, Building, Operating, or Expanding Natural Gas Pipeline) Regulations, 2008.
- (2) They shall come into force on the date of their publication in the Official Gazette.

### 2. Definitions.

- (1) In these regulations, unless the context otherwise requires,
  - (a) “Act” means the Petroleum and Natural Gas Regulatory Board Act, 2006;
  - (b) “affiliate” means an associated person in relation to the entity or the entity in relation to an associated person-
    - (i) who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the entity or an associated person, as the case may be;
    - (ii) who holds, directly or indirectly, shares carrying not less than 26% of the voting power in the entity or associated person, as the case may be;
    - (iii) who appoints more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the entity or the associated person, as the case may be; or
    - (iv) who guarantees not less than 10% of the total borrowings of the entity or the associated person, as the case may be.
  - (c) “appointed day” means the date of October 1, 2007 when the Central Government notified the establishment of the Petroleum and Natural Gas Regulatory Board;
  - (d) “Board” means the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Act;
  - (e) “capital cost” means cost in respect of creation of a fixed asset;

- (f) “cost” means the capital cost, direct cost, financial cost, fully allocated cost or operating cost, as the case may be.
  - (g) “direct cost” means cost that can reasonably be identified as cost incurred for laying, building, operating, or expanding a natural gas pipeline;
  - (h) “financing cost” means the cost of financing the creation of an asset or for meeting the requirements of incurring an operating cost;
  - (i) “fully allocated cost” means the sum of direct costs plus a proportional share of indirect costs derived on the basis of the level of activities carried out and on consistently applied basis of allocation;
  - (j) “indirect cost” means such cost which cannot be directly identified with either laying, building, operating, or expanding a natural gas pipeline or marketing of natural gas and includes, but are not limited to common overhead costs, common administrative expenses and taxes;
  - (k) “marketing of natural gas” means the activity of selling or distribution of natural gas;
  - (l) “natural gas pipeline” means natural gas pipeline as defined under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008.
  - (m) “operating cost” means cost in respect of upkeep and maintenance of a fixed asset or service;
- (2) Words and expressions used and not defined in these regulations, but defined in the Act or in the rules or regulations made thereunder, shall have the meanings respectively assigned to them in the Act or in the rules or regulations, as the case may be.

### **3. Application.**

These regulations shall apply to an entity-

- (1) which proposes to lay, build, operate or expand natural gas pipeline and is authorized to do so under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008;
- (2) which is laying, building, operating or expanding natural gas pipeline and has been authorized to do so under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008;
- (3) which is authorized by the Central Government before the appointed day for laying, building, operating, or expanding natural gas pipeline; or
- (4) which is either authorized or is directed by the Board for conversion of a dedicated pipeline into a common carrier or contract carrier under the relevant regulations;

Provided that the entity is either engaged or proposes to engage in the activity of marketing of natural gas:

- (a) either on its own;
- (b) through a division, business unit or such other categorization made for different business segments by the entity but without separating the ownership and management control of the same into another entity; or
- (c) through its affiliate.

#### **4. Scope of affiliate code of conduct.**

(1) The affiliate code of conduct referred to in these regulations and *hereinafter* referred to as the “code” sets out the manner of the-

- (a) interactions between the entity and its affiliate for the purposes of carrying out the activities of both transportation and marketing of natural gas based on the principle of “at an arm’s length”; or
- (b) engagement in both the activities of transportation and marketing of natural gas by the entity on its own by following the principle of “at an arm’s length”.

(2) The objectives of this code are to ensure-

- (a) protection of the interests of the consumers and other entities against the actions of an entity while dealing with its affiliate as also when the entity on its own is engaged in both the activities of transportation and marketing of natural gas;
- (b) prevention of cross-subsidization of the costs between the regulated activity and any other non-regulated activity including the activity of marketing of natural gas either by the entity on its own or through its affiliate which adversely affects or has the potential of adversely affecting fair trade and competition between the entities;
- (c) that there is no preferential access allowed by the entity to itself or its affiliate for the regulated activity; and
- (d) development of a fair and competitive natural gas market.

#### **5. Degree of accounting separation.**

(1) The entity shall ensure accounting and financial separation by maintaining separate financial records and books of accounts in respect of the regulated activity in cases where-

- a) the affiliate of the entity is engaged or proposes to engage in the marketing of natural gas; or
- b) the entity on its own or proposes to engage in both the activities of transportation and marketing of natural gas;

- (2) The entity shall ensure that while undertaking the accounting and financial segregation in respect of the regulated activity under sub-regulation (1), both direct and indirect costs are fully allocated to the regulated activity in a transparent manner and without any cross-subsidization of costs with any other non-regulated activity.
- (3) The entity shall adhere to the accounting standards and guidelines of The Institute of Chartered Accountants of India as well as the Companies Act, 1956 and the Board may, if it deems fit, examine the appropriateness of the basis of cost allocation followed by the entity.

**<sup>1</sup>[5A. Degree of Legal separation.**

An entity engaged in both marketing of natural gas and laying, building, operating or expanding pipelines for transportation of natural gas on common carrier or contract carrier basis, shall, on or before the 31st day of March 2017, create a separate legal entity so that the activity of transportation of natural gas is carried on by such separate legal entity and the right of first use shall be available to the affiliate of such separate legal entity.

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**Explanatory Memorandum**

Under the provisions of section 21 (Right of first use) of the Petroleum and Natural Gas Regulatory Board Act, 2006, the Board may require an entity which is carrying on both the activities of marketing of natural gas and its transportation to separate these activities which may include separation of the ownership of the pipelines. Under the Petroleum and Natural Gas Regulatory Board (Guiding Principles for Declaring or Authorizing Natural Gas Pipeline as Common Carrier or Contract Carrier) Regulations, 2009, in cases where the activities of marketing of natural gas and transportation of natural gas are carried out by separate entities, the right of first use of the pipeline will continue to be available to the associate entity of the transporter till such time the separation of ownership (managerial ownership) takes place. Also, under the Petroleum and Natural Gas Regulatory Board (Affiliate Code of Conduct for Entities Engaged in Marketing of Natural Gas and Laying, Building, Operating, or Expanding Natural Gas Pipeline) Regulations, 2008 the rights and obligations between the transportation entity and its marketing affiliate have been laid down.

2. The Board after issuing a concept paper on the unbundling of marketing and transportation activities of natural gas and subsequent public consultation and deliberations, has decided to mandate legal separation of an entity engaged in marketing of natural gas and laying, building, operating or expanding pipelines for transportation of gas on common carrier or contract carrier basis on or before 31.03.2017 by creating separate legal entities so that the activity of transportation of natural gas is carried on by such separate legal entity and the right of first use shall be available to the affiliate of such separate legal entity. The primary considerations for mandating legal separation within the set timelines are:---

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<sup>1</sup> Ins. by Reg. (2), the Petroleum and Natural Gas Regulatory Board (Affiliate Code of Conduct for Entities Engaged in Marketing of Natural Gas and Laying, Building, Operating or Expanding Natural Gas Pipeline) Amendment Regulations, 2014 (w.e.f. 19.02.2014).

- (i) It is an essential requisite for ensuring arms length transactions between gas transportation entities and their customers, thus leading to development of fair and competitive gas transportation markets.
  - (ii) It would be a step further towards determination of fair and accurate transportation tariffs.
  - (iii) Based on studies contained in the report titled “Vision 2030”- Natural Gas Infrastructure in India”, the indicator of pipeline length, volumes, availability of natural gas from various sources and entities operating in the transportation infrastructure sector shows that market maturity would peak in 2016-17 therefore, synchronizing with the set timelines for ensuring legal separation of transportation activities from other activities of the entity.
  - (iv) Since administrative, financial, technical, taxation and legal issues would arise in performing legal separation, sufficient time period (upto 31.03.2017) needs to be allowed to entities for resolving such issues.
3. The proposed amendment to the Regulations accordingly mandates that an entity engaged in both marketing and transportation of natural gas shall, on or before the 31st day of March 2017, create a separate legal entity so that the activity of transportation of natural gas is carried on by such separate legal entity and the right of first use shall be available to the affiliate of such separate legal entity.]

## **6. Confidentiality of Consumer information.**

- (1) The entity shall not release to an affiliate any information relating to a consumer without his written consent except where such information is required to be disclosed for–
- (i) billing or market operation purposes;
  - (ii) law enforcement purposes;
  - (iii) processing of past due accounts of the consumer which have been passed on to a debt collection agency;
  - (iv) where the information has been sufficiently aggregated so that any individual consumer’s information cannot reasonably be identified.
- (2) Where an entity shares information services with an affiliate, all information shall be protected from access by the affiliate and access to an entity’s information services shall include appropriate computer data management and data access protocols as well as contractual provisions regarding the breach of any access protocols.

## **7. Shared corporate services.**

An entity may share employees with its affiliate only in relation to the shared core corporate services subject to the stipulation that such employees shall neither be directly or indirectly involved in collecting, storing, collating, processing,

transmitting or having access to any information which is related to the regulated activities.

## **8. Non-discriminatory access to services.**

- (1) The entity shall treat all other entities engaged in natural gas marketing on the same non-discriminatory basis as it treats its own affiliate.
- (2) The entity shall take reasonable steps to ensure that its affiliate does not cause in its marketing or promotional materials any favored treatment or preferential access to the entity's system and in case the entity becomes aware of an inappropriate marketing or promotional activity by its affiliate, the entity shall-
  - (a) immediately notify affected consumers of such violation;
  - (b) take necessary steps to ensure that the affiliate is aware of the concern; and
  - (c) inform the Board in writing of such activity, the remedial measures that were undertaken by the entity and the steps taken by the entity to prevent its reoccurrence in future.
- (3) The entity shall apply the natural gas pipeline tariff authorized under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008 to an affiliate in the same manner as is applicable to similarly placed non-affiliates.
- (4) The entity shall not transfer or assign to an affiliate a consumer for whom the entity is providing service of the regulated activity unless the consumer gives permission to such transfer or assignment in writing.
- (5) The entity and its affiliate shall not trade upon, promote, or suggest to any consumer, supplier or third-party that they may receive preferential treatment as a result of the affiliation.
- (6) The entity shall not provide to anyone any negative information about its affiliate or non-affiliate competitors.

## **9. Compliance measures.**

- (1) The entity shall be responsible for ensuring compliance with this code and shall-
  - (i) perform an internal review on a quarterly basis establishing compliance by the entity to the code;
  - (ii) circulate the code to its employees and make them aware of its compliance;
  - (iii) monitor compliance by its employees' to this Code; and
  - (iv) maintain verifiable record of documentation establishing such compliance.
- (2) The entity shall submit the compliance report on an annual basis to the Board reporting the extent of compliance by the entity to the provisions under these regulations in case-

- (a) the entity is engaged or proposes to engage in both the activities of transportation and marketing of natural gas; or
- (b) of dealing by the entity with its affiliate which is marketing natural gas.

#### **10. Record keeping and reporting requirements.**

- (1) The entity shall maintain updated records in a form and manner so as to be able to substantiate compliance with this code.
- (2) In addition to any other reporting requirements contained in this code, the entity shall provide the following information within a period of one month of the notification of these regulations, namely:-
  - (a) list of all affiliates with whom the entity transacts including business addresses, list of the officers and directors and description of the business of its affiliate;
  - (b) corporate organization chart indicating relationships and ownership percentages;
  - (c) costing policy of the entity with respect to the regulated activity including the basis followed by the entity for allocation of common expenditure; and
  - (d) any other relevant information as deemed fit by the Board:

Provided that the entity shall update the information provided to the Board under clauses (a) to (d) for any change within a period of one month of the occurrence of such a change.

- (3) The entity shall web-host the description of its regulated activities including that of its affiliates.

#### **11. Consequences of default and termination of authorization procedure.**

The entity shall abide by all the provisions under these regulations and any failure in doing so may lead to termination of the authorization in the manner specified in the Petroleum and Natural Gas Regulations (Authorizing Entities to Lay, Build, Operate, or Expand Natural Gas Pipelines) Regulations 2008 including any other penal action under the Act.

#### **12. Miscellaneous.**

If any dispute arises with regards to the interpretation of any of the provisions of these regulations, the decision of the Board shall be final.

[F. No. S-Admn./II/8/2007-Vol.1]  
AJAY TYAGI, Secy.

**Foot Note:** Principal regulations were notified vide G.S.R. 540(E), dated 17<sup>th</sup> July, 2008 and amended vide F. No. PNGRB/M(C)/42, dated 19<sup>th</sup> February, 2014.