
Draft

Affiliate Code of
Conduct for
Entities Engaged
in Marketing of
Natural Gas and
Laying, Building,
Operating or
Expanding Natural
Gas Pipeline as
Common Carrier
or Contract Carrier

Petroleum & Natural Gas Regulatory
Board, New Delhi

November 29, 2007

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NOTIFICATION

New Delhi, the.....

PETROLEUM AND NATURAL GAS REGULATORY BOARD

In exercise of the powers conferred by clauses (s), (x) & (y) of sub-section (2) to section 61 of the Petroleum and Natural Gas Regulatory Act, 2006 (19 of 2006), the Petroleum and Natural Gas Regulatory Board hereby makes the following regulations, namely:-

Short Title and commencement-

- 1.1 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 as Common Carrier or Contract Carrier) Regulations, 2007.
- 1.2 These Regulations shall come into force on the date of their publication in the Official Gazette.

Definition

- 2.1 In these Regulations, unless the context otherwise requires-
- 2.1.1 "Act", means the Petroleum and Natural Gas Regulatory Board Act, 2006;
- 2.1.2 "Affiliate" means an associated person in relation to the entity or the entity in relation to an associated person-

- a) 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, or
- b) 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, or
- c) 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, or
- d) who guarantees not less than 10% of the total borrowings of the entity or the associated person, as the case may be.

2.1.3 “Appointed Day” means the date of October 1, 2007.

2.1.4 “Board” means the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of Section 3 of the Act.

2.1.5 “costs” means

- a) capital cost of the creation of an asset
- b) operating cost in upkeep and maintenance of an asset or service
- c) financial cost in financing either creation of an asset or requirements of incurring of an operating cost

2.1.6 “direct costs” means costs that can reasonably be identified as costs incurred for laying, building, operating or expanding a natural gas pipeline.

2.1.7 “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 consistently applied basis of allocation.

2.1.8 “indirect costs” means costs that cannot be clearly 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;

2.1.9 “Marketing of Natural Gas” means the activity of selling or distribution of natural gas through a natural gas pipeline or in a city or local natural gas distribution network.

2.1.10 “natural gas pipeline” is as per the definition under the Regulations for Determination of Pipeline tariff for Natural Gas Pipelines.

2.1.11 “regulated activity” means the activity of laying, building, operating or expanding a natural gas pipeline.

2.2 All other words and expressions used herein but not defined shall have the same meanings respectively assigned to them in the Act.

2.3 Unless defined herein or in the Act, the provisions of the General Clauses Act, 1897 as amended from time to time shall apply to these Regulations.

Scope

These regulations shall apply to an entity -

3.1.1 which proposes to lay, build, operate or expand natural gas pipeline for transportation of natural gas on common carrier or contract carrier basis

and has been authorized to do so under the Regulations for Authorizing Entities for the Development of Natural Gas Pipelines, or

3.1.2 which is authorized by the Central Government before the appointed day for laying, building, operating or expanding natural gas pipeline on common carrier or contract carrier basis, or

3.1.3 which has been laying, building, operating or expanding natural gas pipeline before the appointed day and has been authorized under the Regulations for Authorizing Entities for the Development of Natural Gas Pipelines, or

3.1.4 which owns a natural gas pipeline and which has been declared as common carrier or contract carrier by the Board under the Regulations for Declaring Natural Gas Pipelines as Common Carrier or Contract Carrier.

and the entity on its own (implying by way of a division, business unit, etc. of the entity and without separating the ownership and control of the same into another entity) or through its affiliate (s) is also marketing natural gas.

Rationale for Affiliate Code of Conduct

4.1 The Affiliate Code of Conduct (hereinafter referred to as the Code) sets out the terms and conditions for the -

- a) interactions between the entity and its affiliate (s) for engaging in the activities of both transportation and marketing of natural gas based on the principle of “At an Arm’s Length” and
- b) basis of engagement in both the activities of transportation and marketing of natural gas by the entity on its own based on the principle of “At an Arm’s length”.

4.2 The objective of this Code is to ensure a competitive natural gas market and protect the interest of the consumers against the actions of such an entity while dealing with its affiliate (s) as also when the entity on its own is engaged in both the activities of transportation and marketing of natural gas. The terms and conditions established in the Code are intended to –

- a) minimize the potential of cross-subsidization of the costs between the regulated activity and the non-regulated activity of marketing of natural gas, either by the entity on its own or through its affiliate (s),
- b) protect the confidentiality of consumer information collected by the entity in the course of providing regulated service, and
- c) ensure that there is no preferential access allowed to itself or to its affiliate (s) for the regulated activity.

Degree of Accounting Separation

5.1 The entity shall ensure accounting and financial separation by maintaining separate financial records and books of accounts for the regulated activity where the –

- a) entity's affiliate is in marketing of natural gas, or
- b) entity on its own engages in both the activities of transportation and marketing of natural gas.

5.2 The entity shall ensure that the direct costs and indirect costs are properly, objectively and fully allocated to the regulated activity in a transparent manner and there is no cross-subsidization of costs.

5.3 The Board may, if it deems fit, examine the appropriateness of the basis of allocation, including adherence to the accounting standards and guidelines of The Institute of Chartered Accountants of India as well as to that prescribed under various statutes, like, Companies Act, 1956, Income Tax Act, 1961, etc.

Confidentiality of consumer information

6.1 An entity shall not release to an affiliate any confidential information relating to a consumer without an appropriate written consent, except where confidential information is required to be disclosed:

- (i) for billing or market operation purposes;
- (ii) for law enforcement purposes;
- (iii) for processing of past due accounts of the consumer which have been passed to a debt collection agency;
- (iv) where the information has been sufficiently aggregated so that any individual consumer's information cannot reasonably be identified.

6.2 Where an entity shares information services with an affiliate, all confidential information must be protected from access by the affiliate. 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.

6.3 An entity may share employees only in relation to shared core corporate services. However, any employee to be shared should neither be directly or indirectly involved in collecting, storing, collating, processing, transmitting or having access to, confidential information.

Equal Access to Services

- 7.1 The entity shall take reasonable steps to ensure that the affiliate does not imply in its marketing or promotional material any favoured treatment or preferential access to the entity's system. If the entity becomes aware of inappropriate marketing or promotional activity by an affiliate, it shall:
- (i) immediately notify affected consumers of such violation;
 - (ii) take necessary steps to ensure that the affiliate is aware of the concern; and
 - (iii) inform the Board in writing of such activity, the remedial measures that were undertaken by the entity and the system to prevent its re-occurrence in future.
- 7.2 An entity shall treat all other entities engaged in gas marketing on the same non-discriminatory basis as it treats its own affiliate.
- 7.3 An entity shall apply approved pipeline tariffs to an affiliate in the same manner as would be applied to similarly situated non-affiliate parties.
- 7.4 An 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.
- 7.5 An 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. Entities may not provide negative information about affiliate or non-affiliate competitors.

Compliance Measures

8.1 An entity shall be responsible for ensuring compliance with this Code and shall:

- (i) perform periodic compliance review;
- (ii) communicate the Code to its employees;
- (iii) monitor its employees' compliance with this Code; and
- (iv) maintain a verifiable record of documentation in this regard.

8.2 The entity shall submit to the Board the compliance report on an annual basis confirming that the entity has abided by the provisions under these regulations in dealings with its affiliate(s).

Record Keeping and Reporting Requirements

9.1 An entity shall maintain updated records in a form and manner so as to be able to substantiate compliance with this Code.

9.2 In addition to any other reporting requirements contained in this Code an entity shall provide the following information, in a form and manner and at such times as may be requested by the Board:

- (i) a list of all affiliates with whom the entity transacts, including business addresses, a list of the officers and directors, and a description of the affiliate's business activity;
- (ii) a corporate organization chart indicating relationships and ownership percentages;

- (iii) the entity's specific costing policy; and
- (iv) any other relevant information as deemed fit by the Board.

Consequences of Default and Termination of Authorization procedure

10.1 An authorized entity shall abide by all the terms and conditions specified in these Regulations and a failure in doing so shall be dealt with as per the following procedure:

10.1.1 The Board shall issue a notice to the defaulting entity allowing it a reasonable time to fulfill its obligations under these Regulations.

10.1.2 No further action shall be taken in case remedial action is taken by the entity within the specified period to the satisfaction of the Board.

10.1.3 In case of failure to take remedial action the Board may, after issuing a notice giving one month's time encash the performance bond of the entity furnished by the entity under the Regulations for Authorizing Entities for the Development of Natural Gas Pipelines.

10.1.4 The entity shall be required to replenish the performance bond to its original level, within a period of 15 days from the date of its encashment. In case of entity not replenishing the bond within 15 days, the Board may terminate the authorization of the entity.

10.1.5 When the entity replenishes the performance bond, but fails to take remedial action, the Board may, after giving a notice giving one month time, may terminate the authorization of the entity.

10.1.6 The procedure for implementing the termination of an authorization will be as laid out in clause 4.10.7 of the Regulations for Authorizing Entities for the Development of Natural Gas Pipelines.

10.1.7 Notwithstanding the above, the Board may also levy civil penalty as per Section 28 of the Act in addition to taking action as prescribed for offences and punishment under Chapter IX of the Act.

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. Further, the Board may at any time effect appropriate modifications in these regulations.