

NOTIFICATION

New Delhi, the 19th March, 2008.

G.S.R. 198(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 (Exclusivity for City or Local Natural Gas Distribution Network) 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) “appointed day” means the date of October 1, 2007 when the Central Government notified the establishment of the Petroleum and Natural Gas Regulatory Board;
 - (c) “authorized area” means the area as defined in clause (c) of sub-regulation (1) of regulation 2 of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008;

(d) "Board" means the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Act.

(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.

3. Application.

These regulations shall apply to an entity which is laying, building, operating or expanding or which proposes to lay, build, operate or expand a city or local natural gas distribution network (hereinafter referred as CGD network) under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.

4. Rationale for allowing exclusivity.

The rationale for allowing exclusivity to an entity is explained in Schedule A, which only explains the rationale for allowing exclusivity to entities to lay, build, operate or expand CGD networks, is not part of this regulation, does not have any legal force and should not be quoted or relied upon while interpreting these regulations.

5. Exclusivity for laying, building or expansion of CGD network

(1) The Board may allow an entity exclusivity for laying, building or expanding of CGD Network over the economic life of the project subject to the following terms and conditions, namely:-

(a) during the economic life which is normally expected to be twenty five years of the CGD network project consisting of network of pipelines, online compressors for compressing natural gas into CNG and other allied equipments and facilities, the authorized entity shall carry out further expansions required through pipeline capacity building and CNG

infrastructure as well as carry out replacements and upgradation of assets and facilities as and when necessary in order to maintain the network system integrity at all times including keeping it abreast of technical advancements and the entity shall meet the requirement for investment in pipelines and other allied equipments including online compressors for compression of natural gas into CNG which may emerge either to meet the entity's own requirements or other entities requirements post-exclusivity period as per regulation 6 besides complying with the service obligations as per regulation 8;

(b) The economic life of the project shall commence from,-

- (i) in case an entity proposes to lay, build or expand a CGD network on or after the appointed day, the date of grant of authorization to the entity by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008;
 - (ii) in case an entity is laying, building or expanding CGD network before the appointed day, where the entity has either an authorization from the Central Government before the appointed day or an authorization from the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the economic life of the CGD Network project shall commence from the start-up date of the commencement of physical activities of laying, building or expanding the CGD network.
- (c) at the end of the economic life of the project, issue of allowing further extension of the period of exclusivity or not may be considered by the Board for a block of ten years at a time, depending on the satisfactory compliance of the service obligations and quality of service norms as specified in the

Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the service obligations under regulation 8 and on such terms and conditions, as it may deem fit at that point in time.

- (d) non-compliance to the provisions of clause (a) of sub-regulation (1) shall be dealt through levy of penalty and termination of the exclusivity period as per the provisions of regulation 10 and the Board reserves the right to allow any other entity to take up the activities of laying, building or expanding or replacement of assets and facilities or both in the CGD network in terms of the provisions in regulation 10.

6. Exclusivity from the purview of common carrier or contract carrier.

- (1) The Board may provide exclusivity to an entity proposing to lay, build, operate or expand a CGD network from the purview of common carrier or contract carrier for a period of five years from the date of authorization subject to the conditions that the entity meets the service obligations as stipulated under regulation 8.
- (2) In case an entity is laying, building, operating or expanding a CGD network before the appointed day and has been authorized by the Central Government or has been authorized by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the period of exclusivity from the purview of common carrier or contract carrier shall be -
- (a) three years from the date of issue of the letter by the Board for allowing such exclusivity in case the entity has been operating the CGD network for three years or more before the appointed day;
- (b) five years from the date of issue of the letter by the Board for allowing such exclusivity in case the entity has been operating the CGD network for less than three years before the appointed day.

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7. Specific performance bond.

Entity laying, building, operating or expanding a CGD network before the appointed day and authorized by the Central Government for such activities shall be required to furnish to the Board, a specific performance bond linked to allowing of exclusivity and equal to the amount as specified under regulation 9 of the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.

8. Service obligations.

(1) The entity allowed exclusivity under regulation 6 shall comply with the following service obligations during the exclusivity period, namely:-

(a) in respect of an entity proposing to lay, build, operate or expand a CGD network after the appointed day and which has been authorized by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the entity shall -

- (i) provide domestic PNG connections as per the bid;
- (ii) lay and build steel pipeline as per the inch-kilometer bid;
- (iii) reach all charge areas or wards in the authorized area through pipelines of adequate size to meet the demand of the consumers in these charge areas or wards; and
- (iv) provide piped natural gas connection on demand to a domestic consumer for cooking purposes within a distance of twenty five meters of the metering unit at the consumer's end till the tap-off in the pipeline:

Provided that the physical achievement shall be monitored by the Board on a quarterly basis;

(b) in respect an entity laying, building, operating or expanding a CGD Network before the appointed day and which has been either authorized by the Central Government or by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the entity shall -

(i) achieve the targets in respect of providing PNG domestic connections and laying and building steel pipeline inch kilometer as per sub-clauses (i) and (ii) of clause (a) of sub-regulation (1) at the levels derived based on the successful bids of similar placed cities or local areas in terms of the population as per the census of India 2001 or in the absence of such similarly placed cities or areas, the cities which come closest to these cities or areas in terms of population by suitable extrapolation or interpolation;

(ii) reach all charge areas or wards through pipelines of adequate size to meet the demand of the consumers in these charge areas or wards;

(iii) provide piped natural gas connection on demand to a domestic consumer for cooking purposes within a distance of twenty five meters of the metering unit at the consumer-end till the tap-off point in the pipeline:

Provided that the physical achievement shall be monitored by the Board on a quarterly basis.

(2) During the period of exclusivity allowed under regulation 6, the authorized entity may supply compressed natural gas for dispensing either through CNG dispensing facilities owned by itself or by any other entity and in the latter case,

the other entity shall be required to pay the compression charge for CNG to the authorized entity and enter into a mutually agreeable commercial contract with the authorized entity for-

- (a) either having the online compression facilities installed in its own dispensing facilities wherein the online compression facilities shall be owned, installed and operated by the authorized entity, or
 - (b) take delivery of CNG ex-online compressor station of the authorized entity for subsequent dispensing in the authorized area.
- (3) After the expiry of the exclusivity period allowed under regulation 6, any entity using the CGD network for transportation of natural gas may use the online compressor facilities of the authorized entity against payment of compression charge for CNG for dispensing of CNG either by itself or by any other entity.

9. Post-exclusivity period, that is, beyond the period of exclusivity allowed under regulation 6.

The entity shall -

- (1) continue to expand the network of pipelines by increasing the penetration within all charge areas based on the demand for PNG domestic, besides laying requisite infrastructure for adequate availability of CNG and at adequate pressure in the CGD network, which could emerge out of entity's own requirement or that of other entities which may use the CGD network in the post-exclusivity period.
- (2) allow third party access on a non-discriminatory basis to any entity in its CGD network as per the provisions in the -
 - (a) relevant regulations on access code for CGD networks; and
 - (b) relevant regulations for declaring CGD networks as common carrier or contract carrier;

- (3) provide piped natural gas connection on demand to a domestic consumer of any entity within any charge area:

Provided that the distance from the metering unit from the consumer-end to the tap-off point in the pipeline shall not be more than twenty five meters.

10. Cancellation of exclusivity.

- (1) The exclusivity allowed under regulation 5 to an entity proposing to lay, build, operate or expand a CGD network after the appointed day and which has been authorized by the Board or laying, building, operating or expanding a CGD network before the appointed day and which has been authorized by the Central Government or by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, shall be terminated, either for the entire authorized area or part thereof, in case the entity either refuses or fails to lay, build or expand the CGD network to meet the natural gas demand requirements including the requirements of other entities allowed to use the CGD network post exclusivity provided under regulation 6.
- (2) Non-compliance with the provisions under regulation 8 or repeated violation of the quality of service standards specified under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 shall result in cancellation of the exclusivity.
- (3) The procedure with regards to the termination of exclusivity under sub-regulations (1) and (2) shall be as under, namely:-
- (a) the Board shall issue a notice to the defaulting entity allowing it a reasonable time to fulfill its service obligations under these regulations and also as per the quality of service standards specified in the Petroleum and

Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008;

(b) no further action shall be taken in case remedial action to the satisfaction of the Board is taken by the entity within the specified period;

(c) in case of failure to take remedial action by the entity, the Board may encash the performance bond as per the following basis, namely:-

(i) twenty five percent of the amount of the performance bond for the first default; and

(ii) fifty percent of the amount of performance bond for the second default:

Provided that the entity shall make good the encashed performance bond in each of the cases within a week failing which the remaining amount of the performance bond shall also be encashed and the exclusivity including authorization of the entity shall be terminated;

(iii) one hundred percent of the amount of performance bond for the third default and the exclusivity shall also be simultaneously terminated;

(d) the entities authorized under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 shall also have to replenish the performance bond within fifteen days failing which their authorization shall also be terminated.

(4) The exclusivity allowed under regulation 6 to an entity either proposing to operate a CGD network after the appointed day and which has been authorized by the Board, or which is operating a CGD network before the appointed day and which has been authorized by the Central Government or the Board under

the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, shall be terminated in case the entity fails to comply with the service obligations under these regulations or on repeated violations of the quality of service standards as per the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008.

(5) The procedure with regards to the termination of exclusivity under sub-regulation (4) shall be as under, namely:-

(a) the Board shall issue a notice to the entity for not meeting the service obligations under these regulations and also quality of service standards specified under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 and allow it a reasonable time to fulfill its obligations under these regulations;

(b) no further action shall be taken in case remedial action is taken to the satisfaction of the Board by the entity within the specified period;

(c) in case of failure to take remedial action, the Board may encash the performance bond on the following basis, namely:-

(i) twenty five percent of the amount of the performance bond for the first default; and

(ii) fifty percent of the amount of performance bond for the second default:

Provided that the entity shall make good the encashed performance bond in either of the cases within a week, failing which the remaining amount of the performance bond shall also be encashed and the exclusivity including authorization of the entity shall be terminated;

- (iii) one hundred percent of the amount of performance bond for the third default and the exclusivity shall also be simultaneously terminated;
- (d) The entities authorized under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008 shall also have to replenish the performance bond within fifteen days failing which their authorization shall also be terminated;
- (e) any entity losing its exclusivity allowed under regulation 5 shall also automatically lose its exclusivity allowed under regulation 6.

11. 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.

Schedule A [see regulation 4]

Rationale for allowing exclusivity to lay, build, operate or expand a CGD network ¹

- 1 Exclusivity-
 - a) for laying, building or expansion of the CGD network during the economic life of the project; and
 - b) in terms of an exemption from the purview of the contract carriage or common carrier for a limited period of time-

is envisaged with a view to facilitate the development of a planned and integrated CGD network with appropriate priorities for end-use of natural gas as also the network spread besides providing incentive to the entity for investing in such project.

- 2 Exclusivity as per sub-clause a) of clause 1 is or shall be necessary to facilitate the development and operation of an integrated network by a single entity as per the prescribed technical standards, specifications including safety standards. This shall also obviate multiple digging-up of lanes, roads, etc. in the authorized area.

- 3 Exclusivity as per sub-clause b) of clause 1 is or shall be necessary due to the following reasons, namely:-
- a) During the initial phase of the development of city or local natural gas distribution network, there shall be a need to have a close synchronization between the development of requisite infrastructure and the ramp-up in the natural gas volumes for different end-consumers in different areas. It is expected that the development of the city or local natural gas distribution network would be quicker if the same is guided by entity's own plan (which is responsible for meeting various service obligations) rather than the expectation of other potential marketers of natural gas in the network. Also, it shall be more practical for the Board to deal with one entity rather than multiple entities to ensure a strict compliance with the service obligations by the entity in the initial period;
 - b) during such limited period of exclusivity, the authorized entity could be made directly responsible for meeting the desired service obligations, viz., achieving maximum PNG domestic connections and other related aspects;
 - c) besides such an approach is also likely to incentivize investments in this capital intensive business.
- 4 Ideally, while the exclusivity as per sub-clause a) of clause 1 shall be for the economic life of the project, the exclusivity as per sub-clause b) of clause 1 shall depend upon various factors, viz., the projected natural gas demand build-up in the city or local area (which in turn would depend upon the key drivers for demand in that city or local area, such as, level of industrial or commercial activity, vehicular population and conversion of vehicles in to CNG, potential domestic PNG customers, consumer preferences, price of alternative fuels, etc.), geographical spread and population, projected capital cost of the project, investment climate, etc. However, considering that these factors shall vary from city to city, a credible

¹ This Schedule A only explains the rationale for allowing exclusivity to entities for laying, building, operating or expanding CGD Networks and is not part of these regulations. Therefore, it does not have any legal force and should not be quoted or relied upon while interpreting these regulations.

assessment of exclusivity period based on these factors may not be always practical. Thus, it is proposed that the period of exclusivity at sub-clause b) of clause 1 may be limited to five years for cases where an entity proposes to lay, build, operate or expand a CGD network. However, where an entity is laying, building, operating or expanding a CGD Network before the appointed day and has been authorized by the Central Government or is authorized by the Board under the Petroleum and Natural Gas Regulatory Board (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Regulations, 2008, the period of exclusivity shall be for three years (if the entity has been operating for three years or more before the appointed day) or five years (if the entity has been operating for less than three years before the appointed day).

[F. No. S-Admn/II/8/2007-Vol. I]

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