

NATURAL GAS REGULATORY AUTHORITY ORDINANCE,
2000

ORDINANCE NO. I OF 2000 AN ORDINANCE

F.No.2 (1)/2000-Pub:—The following Ordinance promulgated by the President is hereby published for general information:-

to provide for the establishment of Natural Gas Regulatory Authority

WHEREAS it is expedient to foster competition, improve the efficiency and availability of natural gas transportation and distribution services in Pakistan through increased private ownership and improved regulation;

AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of the Proclamation of the fourteenth day of October, 1999, and the Provisional Constitution Order No.1, as amended;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take Immediate Action;

NOW, THEREFORE, in pursuance of Proclamation of the fourteenth day of October, 1999, and Provisional Constitutional Order as well as Order No.9 of 1999, and in exercise of all

powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

1. Short title, extent and commencement :—(1) This Ordinance may be called the Natural Gas Regulatory Authority Ordinance, 2000.

(1) — It extends to the whole of Pakistan.

(2) — It shall come into force at once.

2. Definitions :—In this Ordinate, unless there is anything repugnant in the subject or context,-

(60) “Authority” means the Natural Gas Regulatory Authority established under section 3;.

ii) “category of retail consumer” means a category of retail consumer

designated as such by order of the Federal Government from time to time;

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“Chairman” means the Chairman of the Authority and includes an Acting chairman

“consumers” means retail consumers or wholesale consumers;

“development surcharge” means the amount payable by each licensee under subsection (6) of section 19, and calculated in accordance with the rules and which represents, in respect of each category of retail consumer to which it is applicable, the amount, if any, by which the sale price exceeds the prescribed price;

“distribution” means the Activity of transporting natural gas through pipelines and associated facilities at a pressure which would not ordinarily be expected to exceed 300 psig;

“existing companies” means the Sui Southern Gas Company Limited and the Sui Northern Gas Pipelines Limited;

“existing gas purification facilities” means the facilities at the Sui Gas Field used by the existing companies for purification as on the date of commencement of this Ordinance;

“financial year” means the period beginning on the first day of July in a calendar year and ending on thirtieth day of June in the next following calendar year:

“licence” means a licence granted by the Authority under this Ordinance and the Rules to undertake the regulated activities;

“licensee” means the grantee or holder of a licence;

“Member” means a member of the Authority including the Chairman;

(xiii). “minimum charges” means the amount a licensee may charge a retail consumer

section 19;

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as notified by the Federal Government under sub-section (9) of

“natural gas” means hydrocarbons or mixture of hydrocarbons and other gases which at sixty degrees Fahrenheit and atmospheric pressure are in the gaseous state (including gas from gas wells, gas produced with crude oil and residue gas resulting from the processing of gas) consisting primarily of methane, together with any other substances produced with such hydrocarbons;

“person” includes an individual firm, association of persons, partnership, company, firm, corporation, or any other legal entity;

“prescribed period” means the period of time prescribed in the rules for the giving of a notice or directions or for the performance of any other act or acts by the Federal Government or the Authority;

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“prescribed price” means the amount determined under section 19 which represents the amount a licensee would be entitled to receive from each category of its retail consumers in order to achieve its total revenue requirement for the existing companies, and in such manner as determined by the Authority from time to time for other licensees;

“public emergency” means the occurrence of any natural calamity, or an event which threatens public safety, or the sovereignty, security or integrity of Pakistan and declared as such by the Federal Government;

“purification” means the purification or processing of natural gas and may include the removal of any of its constituent gases or the separation from gas of any oil or water;

“regulated activity” means any of the activities of transmission, distribution or sale of natural gas by any person-and the purification of natural gas by an existing company using the existing gas purification

“retail consumer” means a person who purchases or receives natural gas for consumption and not for delivery or resale to others and shall include a person who owns or occupies any premises which are connected to a supply of natural gas;

“rules” means rules made under this Ordinance;

“sale” means the sale of natural gas to retail consumers but shall not include sale of natural gas for vehicular use and self consumption by a licensee in connection with its regulated activity and the expression ‘seller’ shall be construed accordingly;

“sale price” means the price notified under sub-section (3) of section 19 at which a licensee is authorised under this Ordinance and its licence to sell natural] gas to that category of retail consumer and the expression ‘sale

prices' shall be construed accordingly;

"tariff" means the part of any prescribed price determined by the Authority for each licensee in accordance with the terms and conditions of its licence which relates to the undertaking of a single regulated activity and the expression "tariffs" shall be construed accordingly;

"total revenue requirement" means for each financial year, that total amount of revenue determined by the Authority for each licensee In accordance with the terms and conditions of its licence to be required by that licensee so as to ensure it achieves the rate of return provided for in its licence;

(xxvi). "transmission" means the activity of transporting gas through pipelines and other facilities at a pressure of not less than 300 psig or such pressure as the Authority may prescribe from time to time; and

(xxviii) "wholesale consumer" means a person who purchases or receives natural gas for delivery or resale to others but does not include a person dealing in the sale of compressed natural gas as fuel for vehicular use.

3. Establishment of the Natural Gas Regulatory Authority :— (1) As soon as may be but not later than ninety days from the commencement of this Ordinance, the Federal Government shall, by notification in the official Gazette, establish a regulatory authority which shall be known as the Natural Gas Regulatory Authority.

(2) The Authority shall consist of a Chairman and two Members, one of whom shall be designated as the Member Technical and other as the Member Finance.

(3) The Chairman shall be an eminent professional of known integrity and competence with a minimum of twenty-five years of related experience in law, business, engineering, finance, accounting, economics or the oil and gas technology.

(4) The Member Technical shall be a person who is well qualified, experienced, eminent professional of known integrity and competence with a minimum of twenty-five years relevant technical experience in the field of gas including the transmission and distribution thereof.

(5) The Member Finance shall be a person who is well qualified, experienced, eminent professional of known integrity and competence with a minimum of twenty-five years relevant financial experience in the field of corporate finance and accounting preferably in a public utility..

(6) Subject to sub-section (9),-

(i) _ the Chairman shall be appointed by the Federal Government for a term of four years and shall be eligible for reappointment for a similar term;

(ii) the first Member Technical shall be appointed by the Federal Government for an initial term of three years and shall be eligible for reappointment for a term of four years. Subsequent Member Technical shall be appointed by the Federal Government for a term of four years and shall be eligible for reappointment for a similar term; and

(iii) the first Member Finance shall be appointed by the Federal Government for an initial term of two years and shall be eligible for reappointment for a term of four years. Subsequent Member Finance shall be appointed by the Federal Government for a term of four years and shall be eligible for reappointment for a similar term.

(7) The Authority shall make its decisions in a meeting of which each member shall have reasonable notice of the time, place and the matter on which the decision shall be taken. The quorum for a meeting shall be the Chairman and one member. If the Chairman is absent from Pakistan or is unable to perform the function of his office for any other reason, the quorum for meeting of the Authority shall be two members one of whom shall be appointed by the Federal Government to act as Chairman.

(8) The decisions of the Authority shall be made if the meeting is attended by

(i) The Chairman and two members, with the concurrence of the majority;

or

(ii) The Chairman and one member, with the concurrence of the Chairman and the member; and

(iii) | Only the two members, with the concurrence of both the members

“The Chairman and a member shall retire on attaining the age of sixty-five years.

(9) The Chairman or a Member shall not have any direct or indirect financial interest in, or have any connection with, any person engaged in any regulated activity. It shall not be lawful for the Chairman any Member, for so long as he holds office and for a period of two years thereafter to maintain, acquire or purchase, whether in his own name or otherwise, any interest in any firm or company or association of persons carrying on regulated a activities.

(10) The Chairman or a Member may resign from his office by submitting his resignation to the Federal Government. The Chairman or a Member may only be removed from his office It on an Inquiry by the Federal Public Services Commission, he is found unable to perform the functions of his office because of mental or physical incapacity or misconduct.

dt) In case of a vacancy occurring due to the death, resignation or removal of the Chairman or a Member the Federal Government shall, within a period not exceeding ninety days, appoint another qualified person.

(12) The Chairman and Members shall be paid such emoluments as may be determined by the Federal Government and shall not be varied to their disadvantage during their terms of office:

(13) “The Chairman and Members shall not, during their terms of office, engage themselves in any other services, business vocation or employment.

(14) A person who has held the office as Chairman or a Member shall not before the expiration of two years after he has ceased to hold that office enter into the employment of or accept any advisory or consultancy relationship with, ~any person engaged in regulated activities in Pakistan or any related undertaking except with the written approval of the Federal Government

(15) No act or proceeding of the Authority shall be invalid by reason only of the existence of a vacancy in, or a defect in, the constitution of the Authority.

4. Powers and functions of authority :— (1) The Authority shall be exclusively responsible for granting licences for the carrying out of regulated activities and regulating such activities.

(2) | Without prejudice to the generality of the foregoing, the Authority shall-

(a) grant, issue, and renew licences and to modify, amend, suspend, review, cancel and reissue or terminate any licence for the

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undertaking of any regulated activity and to prescribe requirements to be satisfied by applicants for the grant of licence;

prescribe, review, approve and regulate tariffs pertaining to regulated activities and operations of the licensees;

determine the well-head gas prices for the producers in accordance with the relevant agreements or contract, and notify the same in the official Gazette on the first day of July and the first day of January each year;

promote effective competition in the wide flaking of regulated activities;

promote technical and operational efficiency in the carrying out of regulated activities

facilitate - the provision of common carriage for the achievement of a competitive environment;

monitor and enforce compliance by licensees with conditions of their licences;

protect the interests of consumers in accordance, with the provisions of tills Ordinance and the rules;

provide protection to the retail consumers against anti-

competition conduct of the licensees;

resolve complaints and other claims against licensees for contravention of the provisions of this Ordinance or the rules;

resolve disputes between licensees and between licensees and consumers;

in consultation with licensees specify, administer and enforce performance, service and safety standards and other conditions for undertaking any regulated activity.

in consultation with licensees, specify, review and certify standards for the equipment and materials to be used in undertaking any regulated activity;

in consultation with the Federal Government and licensees determine for each licensee a reasonable rate of return which may be earned by that licensee in the undertaking of regulated activity keeping in view all the circumstances;

prescribe a uniform form of accounts and accounting practices to be complied with by the licensees;

oversee the capital expenditure to be made by licensees in connection with any regulated activity;

(q) prescribe procedures and standards vestment programmes by

licensees;

(r) prescribe fines for contravention of the provisions of this Ordinance; and

(s) perform any other functions or exercise power as may be incidental or consequential to the performance of any of its functions or the exercise of any of its powers.

@)The Authority shall levy and collect licence fees and other charges in respect of any of its functions at such rates as may be determined, from time to time, in accordance with the rules.

5. Power of the Federal Government to Issue policy guidelines :—(1) The Federal Government may, as and when it considers necessary, issue guidelines to the Authority on matters of policy consistent with the provisions of this Ordinance or the rules.

(2) Without prejudice to the generality of the foregoing but subject to the provisions of subsection (3) to (5), the Federal Government may issue policy guidelines to the Authority regarding the supply of gas to a particular licensed area and the Authority may require the licensee to provide gas In the said area within such time as the Authority may determine.

(3). If a licensee is of the opinion that in accordance with the requisite financial viability criteria it is not economically viable for it to supply gas in the said area It shall give its reasons to the Authority.

(4) If the Authority agrees with the licensee that it is not financially viable for the licensee to provide gas in the said area unless the Government makes special financial arrangements with the licensee it shall report the matter to the Government and the licensee shall not be obligated to supply gas in the said area unless suitable financial arrangements are made by the Federal Government.

(5) On the receipt of instructions from the Authority, the licensee shall supply gas to the said area within such time as the Authority may specify

6. Delegation of powers :— (1) The Authority may, by general or special order, delegate to any officer of the Authority to exercise on behalf of the Authority any of its powers, duties or functions wider this Ordinance abject to such conditions as it may think fit to Impose.

(2) Notwithstanding the provisions of sub-section (1). the powers specified in clauses (a), (b) and (n) of sub-section (2).of section 4 shall only be exercised in a meeting of the Authority.

7. Recruitment of employees :—To carry out the purposes of this Ordinance the Authority may, from time to time, employ officers, members of its staff, experts, consultants, advisers and other employees on such terms and conditions as it may be deem fit.

8. Chairman, incubus, employees, consultants and advisers :— (1) The Chairman, Members and employees of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Ordinance or the rules or regulations made

thereunder, be deemed to be public servant a within the meaning of section 21 of the Pakistan Penal Code (Ordinance XLV of 1860).

(2) The employees of the Authority shall be governed by the terms and conditions of their contract of employment and shall not be deemed to be civil servants within the meaning of The Civil Servants Act, 1973 (LXXI of 1973).

9. Budget and accounts :— (1) The Authority, in respect of each financial year, prepare its own budget in accordance with prescribed procedures and shall maintain complete and accurate books of accounts of its actual expenses and receipts.

Q) The accounts of the Authority shall be audited annually by the Auditor-General of Pakistan.

GB) The Federal Government shall provide ~ one-time lump-sum grant of fifty million rupees for the establishment of the Authority, whereas for all subsequent years, the Authority shall use the funds collected in pursuance of sub-section (3) of section 4.

10. Report of the Authority :— (1) The Authority shall submit to the Federal Government-

(a) a report at the end of every financial year but before the last day of December of that year, on the conduct of its affairs including anticipated development for the following year; and

(b) a report, from time to time on the state of natural gas in the country identifying the ownership, operation, management,; control and efficiency of regulated activities. amount of transmission and distribution capacity, present and future demand of natural gas, cost of regulated activities and other matters relating to natural gas.

11. Inspection by public :— (1) The Authority shall maintain public files that shall be kept open in convenient form for public examination during reasonable business hours.

(2) Subject to procedures and standards for confidentiality, the Authority's public files shall include all relevant documents to be maintained and indexed as the Authority deems fit.

12. Regulated activities prohibited without licence :— (1) No Person shall undertake any regulated activity without having obtained a licence in the form prescribed by the rule.

(2) Notwithstanding the provisions of subsection (1) the existing companies and all other persons to the extent they were carrying on the activities of transmission, distribution or sale of natural gas on the commencement of this Ordinance shall, for such period as may be prescribed in the rules, be deemed to be licensed to carry on regulated activities on such terms and conditions as may be prescribed in the rules.

13. Exclusive power to grant licenses :— (1) The Authority shall have the exclusive power, to be exercised in the manner prescribed in the rules, to grant, extend, modify, amend, suspend or revoke a licence in respect of any regulated activity.

(2) As far as practicable every licensee unless specifically exempted by the Authority shall get itself registered as a company in accordance with the provision of the Companies Ordinance, 1984 (XLVII of 1984).

(3) All, applications for the grant of any licence shall contain such information and be in such format as may be prescribed by the rules.

(4.) A licence Issued by the Authority shall be subject to such terms and conditions as may be prescribed by the Authority under the rules.

(5) A licence may be restricted by category of regulated activity area of operation, period of authorisation and such other terms as the Authority may, in accordance with the rules, determine.

(6) The Authority may grant exclusive licences to carry on any of the regulated activities to such persons, and on such terms, in respect of such areas or between such places and for such periods, as the Authority may determine in accordance with the rules.

14. Transfer or assignment of licences :— No licence shall, without the prior written approval of the Authority, be assigned or transferred.

15. Power to takeover or interrupt licensed regulated activities In public emergency :— (1) In the event of any public emergency the Federal Government may, by order In writing, require the Authority and the Authority shall thereby be empowered to

(a) take or cause to be taken temporary possession or control of any relevant facility, plant or equipment, maintained or worked by any licensee; or

(b) issue directions to the licensee in relation to the undertaking of any regulated activity governed by the licence;

(c) place such restriction on regulated activities being undertaken by, or provision of regulated activities to, any person or class of persona as may be specified in such order; or

(d) intercept and divert any regulated activity being undertaken by any person specified in such order.

Q) The Federal Government shall provide adequate compensation to such person or

persons as may be affected by the action of the Authority under sub-section (1) in such manner as may be prescribed by the rules.

16. Power to regulate distribution of gas :—Notwithstanding anything contained in a contract or agreement between one licensee and another or between a licensee and a consumer, the Authority may if it is satisfied that it is necessary in the public interest to do, by order in writing, determine the maximum amount of gas which a licensee may supply to another licensee or to a consumer, whether generally or during such period as may be specified In the order.

17. Accounting requirements :—All licensees shall maintain books of accounts in a form prescribed by the Authority so as to enable the Authority to obtain all relevant information as it may require in order to determine that licensee's total revenue requirement for each financial year to establish or vary any tariff or to exercise any other power contained in section 4.

18. = ' Tariff for individual regulated activities :— (1) No licensee shall charge for any regulated activity any fixed or variable amount in excess of the relevant tariff as approved by the Authority from time to time in accordance with the terms and conditions of its licence.

(2) The criteria for the approval and modification of tariffs for regulated activities shall be prescribed in the rules and in the terms and conditions of each licence and shall, inter.alia include:

(a) provision for the protection of consumers against monopolistic pricing;

(b) licensee's cost on research, development and capital Investment programme;

(c) provision of reasonable returns to the licensee to attract investment of the quantitative and qualitative improvements of regulated activities;

(d) encouragement and reward of efficiency;

(e) sending of appropriate price signals regarding the relative abundance or scarcity of supply of such regulated activity;

(f) minimising economic distortions; and

(g) keeping in view the costs of alternate or substitute sources of energy.

(3) The Authority shall, at least ninety days prior to each financial year, determine an estimate of total revenue requirement of each licensee in accordance with the terms and conditions of that licensee's licence and shall inform the Federal Government of each such determination.

(4) _ At the start of each quarter a licensee shall submit for review by the Authority its total revenue requirement for the said financial year after incorporating the actual changes in the well-head prices and other relevant factors, and the Authority shall determine the revised total revenue requirement and inform the Federal Government promptly of such revised determinations.

19. Pricing for retail consumer :— (1). At the time of each determination by the Authority of the total revenue requirement of a licensee pursuant to sub-section (3) of section 18, the Authority shall. inform tote Federal Government the prescribed price which should apply in relation to each category of retail consumers of that licensee.

Q) The Federal Government shall consider the Authority's determination made under subsection (1) and within thirty days thereof inform the Authority of the prescribed prices which will apply in relation to each category of consumers of a licence and the Authority shall promptly notify each licensee undertaking sales to consumers as to the prescribed prices applicable to it:

Provided that if the Authority is required to reconsider its determination pursuant to sub section (5), it shall only notify each licensee undertaking sales to consumers as to the prescribed prices applicable to it after reconsideration.

(3) The Federal Government shall, within thirty days of informing the Authority in pursuance of sub-section (2), notify in the official Gazette the prescribed price applicable to a licensee and the minimum charges and maximum sale prices which a licensee will be permitted to charge each category of retail consumer.

(4) No licensee shall charge any consumer for the supply of natural gas any sale price or minimum charge other than the sale price or minimum charge notified by the Federal Government under sub-section (3):

Provided that if the Federal Government does not issue the notification under subsection (3) within the time specified therein and the authority has determined the price in respect of any category of retail consumer in excess of the most recently notified sale price for that category of retail consumer, the authority shall authorise the licensee to charge the said retail consumer the price so determined by it.

(5) If the Federal Government is of the view that the prescribed prices determined by the Authority under sub-section (1) are based upon inconsistent assumptions it shall require the Authority to reconsider its determination under sub-section (1). Thereupon the Authority shall re-determine and inform the prescribed prices which shall apply to each category of consumers of a licensee again to the Federal Government, pursuant to which the Federal Government shall notify, in the official Gazette, the prescribed price applicable to a licensee and the minimum charges and sale prices specified in sub-section (3):

Provided that consideration and reconsideration shall be completed within thirty days.

(6) Each licensee shall pay to the Federal Government the development surcharge in respect of each unit of natural gas sold during the calendar month within two months of the close