



PETROLEUM & NATURAL GAS REGULATORY BOARD

1st Floor, World Trade Centre, Babar Road, New Delhi - 110 001

Public Notice

The Petroleum & Natural Gas Regulatory Board (PNGRB) under the powers conferred by section 11 (a) read with section 61 (2) (za) of the PNGRB Act, 2006, proposes to issue regulations on Fostering Fair Trade and Competition amongst entities by Sharing of Infrastructure with a view to secure optimum utilization of the infrastructure and avoid drain of scarce financial resources on infructuous investments.

2. The draft regulations prepared for public comments, envisage specific measures for promoting access to infrastructure facilities in the oil and gas sector on non-discriminatory basis while having due regard to right of own use and charges to be decided by entities mutually, subject to intervention of the PNGRB wherever considered necessary.

3. These regulations have been posted at the web site of the PNGRB, viz., www.pngrb.gov.in on 22nd October 2008 with a view to seeking comments of all stakeholders, consumers, experts, etc., on the provisions contained therein up to 24th November 2008, so that the regulations could be finalized after public consultation.

4. The comments and views may be sent at the e-mail id bakshir@pngrb.gov.in and at the postal address to Secretary, Petroleum and Natural Gas Regulatory Board, 1st Floor, World Trade Centre, Babar Road, New Delhi 110001.

(R. P. Watal)
Secretary

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PETROLEUM AND NATURAL GAS REGULATORY BOARD

In exercise of the powers conferred by section 11 (a) read with section 61 (2) (za) 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:-

1. Short title and commencement.

(1) These regulations may be called the “Petroleum and Natural Gas Regulatory Board (Fostering Fair Trade and Competition amongst entities by Sharing of Infrastructure) 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” shall have the same meaning as assigned to it 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;
- c) “Board” means the Petroleum and Natural Gas Regulatory Board constituted under section 3 (1) of the Petroleum and Natural Gas Regulatory Board Act 2006.
- d) “Common User Facilities” (CUF) means the infrastructure declared as “CUF” by the Board under the provisions of regulation 5 of these regulations;
- e) “Common User Facility sharing” refers to an arrangement under which an entity that controls the infrastructure allows other entities to make use of the same based on non-discriminatory terms and conditions.

- f) “Infrastructure” means facilities required for refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products or natural gas excluding production of crude oil and natural gas;

(2) Words and expressions used herein and not defined in these regulations, but defined in the Act or in the rules or regulations made there-under, shall have the same meanings respectively assigned to them in the Act or in the rules or regulations, as the case may be.

3. Objects.

These regulations are aimed at removing or minimizing any form of impediment to competition amongst entities by facilitating access to certain identified infrastructure in a non-discriminatory manner as elaborated in the Explanatory Memorandum at **Schedule A**.

4. Applicability.

These regulations shall apply to an entity engaged in the refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products or natural gas.

5. Infrastructure sharing.

(1) For the purpose of declaring an infrastructure to constitute “CUF”, the Board shall be guided by the following factors:

- a) deployment of similar infrastructure by multiple entities will lead to infructuous investments and avoidable drain of scarce financial resources or adverse environmental impact;
- b) a new entity may not be in a position to replicate the relevant infrastructure within the foreseeable future which would be detrimental to consumers interest; and

c) restriction on sharing of the relevant infrastructure would adversely affect fair trade and competition amongst the entities which would be detrimental to the consumers interest.

(2) Prior to designating infrastructure as "CUF", the Board will generally follow a public consultation process.

(3) Once the Board declares the infrastructure as "CUF", it is mandatory for the entity controlling the infrastructure to share its use with other entities under a mutually agreed Common User Facility sharing arrangement on non-discriminatory terms and conditions.

6. Right of first use etc.

(1) The entity that controls the infrastructure constituting "CUF", shall have right of first use for its own requirement provided it is not detrimental to consumers interest in terms of getting petroleum, petroleum products or natural gas at competitive prices, and the remaining capacity shall be used amongst other entities on non-discriminatory basis.

Provided that mere proposal to use capacity at a later date by the CUF controlling entity cannot be used as a reason to deny access to this capacity to an entity seeking sharing.

(2) An entity that controls the infrastructure constituting "CUF" shall be entitled to approach the Board to prevent the infringement of any right relating to such infrastructure.

Explanation.-For this purpose, "infringement of any right" means doing of any act by any person which interferes with the infrastructure or causes prejudice to the entity controlling the infrastructure.

7. Procedures for sharing.

(1) The following procedures will govern the sharing of infrastructure amongst entities:

- a) The entity seeking Sharing must first submit to the entity that controls the infrastructure a written request to negotiate a mutually agreed arrangement for such sharing. The entity seeking Sharing shall state the details of the specific infrastructure that it seeks to share, the means by which it seeks to arrange for interconnectivity, and the reasons why it believes it should be given a right to share the infrastructure;
- b) It will be the responsibility of the entity controlling the infrastructure to provide access to such infrastructure;
- c) The entity that controls the infrastructure will allow such sharing on non-discriminatory terms and conditions. It must respond within 30 days after receiving a request from the entity seeking Sharing. However, if it believes that it should not be required to share the requested infrastructure, it must provide a speaking response giving the reasons for its inability to share the infrastructure;
- d) If the entities are unable to reach a mutually agreed Sharing Arrangement within 60 days after the entity seeking Sharing sends the request to the other entity, the entity seeking Sharing may submit a written request to the Board, with a copy to the entity that controls the infrastructure;
- e) The entity that controls the infrastructure will have 15 days from the date on which the Sharing Request is filed with the Board to submit to the Board a written response;
- f) Within 30 days of receiving necessary information and after giving a hearing, the Board will issue its decision as to whether the entity that controls the infrastructure is required to share it with the entity seeking Sharing; and
- g) Pending resolution of the sharing mechanism, the Board may, if considered necessary, require infrastructure sharing on an interim basis and may also issue an interim direction to the entity to cease and desist from any specified conduct so as to protect the interests of other entities and consumers.

8. Compensation for Sharing.

Wherever the entities are unable to negotiate a voluntary sharing and compensation agreement, the Board may institute a compensation mechanism for “CUF” considering cost-based rates on non-discriminatory terms and conditions after taking into account the costing methodology specified in **Schedule B**.

9. Confidentiality, compliance measures and record keeping.

(1) The entity controlling “CUF” shall not release to an affiliate any information relating to another entity sharing the infrastructure without its written consent except where such information is required to be disclosed under any statutory provisions, for law enforcement purposes or where the information has been sufficiently aggregated so that information pertaining to the concerned entity cannot be reasonably identified.

(2) The entity that controls the “CUF” shall be responsible for ensuring compliance of these regulations and shall submit a compliance report on a quarterly basis to the Board reporting the extent of compliance by the entity to the provisions of these regulations in the format specified in **Schedule C**.

(3) The entity that controls the infrastructure shall maintain updated records and data so as to be able to substantiate compliance with these regulations.

10. Obligations of entity using the infrastructure of other entity.

The entity using the infrastructure of other entity shall ensure that it is used exclusively by itself and only for the purpose for which the Common user facility sharing Agreement has been signed. Such use shall not be permitted to any third party who is not a signatory to this agreement. The entity using the infrastructure shall also be responsible for its proper use.

11. Miscellaneous.

(1) The provisions of these regulations shall not affect sharing of infrastructure arrangements in respect of common or contract carrier pipelines or city or local natural gas distribution networks which are covered by the relevant regulations.

(2) If any dispute arises with regard to the interpretation of any of the provisions of these regulations, the decision of the Board shall be final.

Schedule A

Explanatory memorandum

The Preamble to the Petroleum and Natural Gas Regulatory Board Act, 2006, mandates the Board to promote competitive markets. Further, under section 11 (a) of the Petroleum and Natural Gas Regulatory Board Act, 2006, the Board is obligated to foster fair trade and competition amongst the entities so as to protect the interest of the consumers. Operationalization of the above mandate requires the Board to put in place measures that will foster fair trade and competition amongst the entities in the specified activities in the sector.

2. The oil and gas sector requires establishment and deployment of infrastructure that is capital intensive and having a long gestation period, which normally acts as a barrier to new entrants. Moreover, creation of multiple infrastructure by various entities results into infructuous investments and drain on scarce financial resources which needs to be minimized when sufficient capacity already exists in the existing infrastructure. Accordingly, the Board envisages specific measures through these regulations for promoting access to infrastructure facilities in oil and gas sector such as Aviation fuelling Stations, Storages/terminals, LNG terminals, LPG Bottling Plants etc., having due regard to right of own use and reasonable charges to be decided between entities mutually, with the intervention by the Board limited to situations when entities fail to reach a mutually agreed sharing arrangement. The Board may also take measures to promote development of infrastructure on a common user basis.

3. It is expected that such measures will encourage open and non-discriminatory access and optimum utilization of infrastructure facilities in the sector, leading to increase in the number of market players and benefitting consumers with wider choice and competitive prices.

Schedule B

Procedure for determination of cost-based, non-discriminatory rates for use of “CUF”

The cost based, non discriminatory rates for use of “CUF” shall be in determined by considering a reasonable return on normative level of capital employed plus a normative level of operating expenses.

2. The reasonable rate of return shall be the rate of return on capital employed equal to 12% post-tax considering the rate of return on long-term risk free Government securities and the need to incentivize investments. The total capital employed shall be equal to the Gross Fixed Assets in the project less accumulated depreciation plus normative working capital. The gross fixed assets shall be equal to their historical cost of acquisition (including the cost of subsequent replacement or improvement or modification) or that assessed normatively by the Board, whichever is lower.

3. Operating cost required in the operation and maintenance of the “CUF” including administrative overheads, other allocated costs, depreciation based on rates as per Schedule VI to the Companies Act, 1956 netted of by miscellaneous income, if any, as submitted by the entity controlling the infrastructure or as assessed by the Board, whichever is lower, will be considered for recovery through compensation for sharing.

4. The volume to be used as the divisor shall be the based on design capacity or level of utilization in the “CUF”, whichever is higher.

5. The usage rates fixed by the Board, under regulation 8, would normally be valid for duration of three years.

Schedule C

Compliance Report by the entity controlling the infrastructure to the provisions of these regulations

Name/description of infrastructure	Controlling entity name	Name of Entity seeking sharing	Brief details of concluded sharing arrangements	Details of Compensation mechanism for sharing
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