L.N. 432 of 2004

MALTA RESOURCES AUTHORITY ACT, 2000 (ACT NO. XXV OF 2000)

Natural Gas (Marketing) Regulations, 2004

BY virtue of the powers conferred by article 28 of the Malta Resources Authority Act, 2000, hereinafter referred to as "the Act", the Minister for Resources and Infrastructure, after consultation with the Malta Resources Authority, has made the following regulations:-

Title, commencement and scope.

1. (1) The title of these regulations is the Natural Gas (Marketing) Regulations, 2004.

(2) These regulations shall be deemed to have come into force on the 1st July, 2004.

(3) These regulations establish rules relating to the organisation and functioning of the natural gas sector.

(4) These regulations give effect to Directive 2003/55/EC of the European Parliament and of the Council of the 26th June, 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC.

Interpretation.

2. In these regulations, unless the context otherwise requires:

"natural gas undertaking" means any natural or legal person carrying out at least one of the following functions: production, transmission, distribution, supply, purchase or storage of natural gas, including LNG, which is responsible for the commercial, technical and, or maintenance tasks related to those functions, but shall not include final customers;

"upstream pipeline network" means any pipeline or network of pipelines operated and, or constructed as part of an oil or gas production project, or used to convey natural gas from one or more such projects to a processing plant or terminal or final coastal landing terminal;

"transmission" means the transport of natural gas through a high-pressure pipeline network other than an upstream pipeline

network with a view to its delivery to customers, but not including supply;

"transmission system operator" means a natural or legal person who carries out the function of transmission and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the transmission system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the transportation of gas;

"distribution" means the transport of natural gas through local or regional pipeline networks with a view to its delivery to customers, but not including supply;

"distribution system operator" means a natural or legal person who carries out the function of distribution and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the distribution system in a given area and, where applicable, its interconnections with other systems, and for ensuring the long-term ability of the system to meet reasonable demands for the distribution of gas;

"supply" means the sale, including resale, of natural gas, including LNG, to customers;

"supply undertaking" means any natural or legal person who carries out the function of supply;

"storage facility" means a facility used for the stocking of natural gas and owned and, or operated by a natural gas undertaking, including the part of LNG facilities used for storage but excluding the portion used for production operations, and excluding facilities reserved exclusively for transmission system operators in carrying out their functions;

"storage system operator" means a natural or legal person who carries out the function of storage and is responsible for operating a storage facility;

"LNG facility" means a terminal which is used for the liquefaction of natural gas or the importation, offloading, and re-gasification of LNG, and shall include ancillary services and temporary storage necessary for the re-gasification process and subsequent delivery to the transmission system, but shall not include any part of LNG terminals used for storage;

"LNG system operator" means a natural or legal person who carries out the function of liquefaction of natural gas, or the importation, offloading, and re-gasification of LNG and is responsible for operating a LNG facility;

"system" means any transmission networks, distribution networks, LNG facilities and, or storage facilities owned and, or operated by a natural gas undertaking, including linepack and its facilities supplying ancillary services and those of related undertakings necessary for providing access to transmission, distribution and LNG;

"ancillary services" means all services necessary for access to and the operation of transmission and, or distribution networks and, or LNG facilities and, or storage facilities including load balancing and blending, but excluding facilities reserved exclusively for transmission system operators carrying out their functions;

"linepack" means the storage of gas by compression in gas transmission and distribution systems, but excluding facilities reserved for transmission system operators carrying out their functions;

"interconnected system" means a number of systems which are linked with each other;

"interconnector" means a transmission line which crosses or spans a border between Member States for the sole purpose of connecting the national transmission systems of these Member States;

"direct line" means a natural gas pipeline complementary to the interconnected system;

"integrated natural gas undertaking" means a vertically or horizontally integrated undertaking;

"vertically integrated undertaking" means a natural gas undertaking or a group of undertakings and where the undertaking or group concerned is performing at least one of the functions of transmission, distribution, LNG or storage, and at least one of the functions of production or supply of natural gas;

"horizontally integrated undertaking" means an undertaking performing at least one of the functions of production, transmission, distribution, supply or storage of natural gas, and a non-gas activity;

"related undertakings" means affiliated undertakings and, or associated undertakings, and, or undertakings which belong to the same shareholders;

"system users" means any natural or legal persons supplying to, or being supplied by, the system;

"customers" means wholesale and final customers of natural gas and natural gas undertakings which purchase natural gas;

"household customers" means customers purchasing natural gas for their own household consumption;

"non-household customers" means customers purchasing natural gas which is not for their own household use;

"final customers" means customers purchasing natural gas for their own use;

"eligible customers" means customers who are free to purchase gas from the supplier of their choice;

"wholesale customers" means any natural or legal persons other than transmission system operators and distribution system operators who purchase natural gas for the purpose of resale inside or outside the system where they are established;

"long-term planning" means the planning of supply and transportation capacity of natural gas undertakings on a long-term basis with a view to meeting the demand for natural gas of the system, diversification of sources and securing supplies to customers;

"emergent market" means a market in which the first commercial supply of its first long-term natural gas supply contract was made not more than 10 years earlier;

"security " means both security of supply of natural gas and technical safety;

"new infrastructure" means an infrastructure not completed by the entry into force of this Directive;

"operator" means transmission system operator or distribution system operator;

"Minister" means the Minister responsible for resources;

"Authority" means the Malta Resource Authority;

"Commission" means the European Commission of the European Communities;

Licensing.

3. No person shall carry out the functions of a natural gas undertaking except under licence of the Authority and on such terms and conditions as may be specified in the licence.

Applications.

4. (1) An application for a new licence or for its renewal under these regulations shall be:

(i) in writing and in such form and contain such information as the Authority may request;

(ii) accompanied by such fees, bank guarantees and insurance policies as the Authority may determine and prescribe to be appropriate. All fees shall be payable on application and any bank guarantees and, or insurance policies shall be effective as from the date of the issue of the licence and must subsist throughout its duration. Interests and penalties, as established by the Authority, shall be payable in the event of default in the due payment of fees:

Provided that a licence granted under these Regulations shall not relieve the licensee from the requirement of any other licence, permit or other authorization, or from an obligation arising from any other law.

(2) A licence granted under these regulations may include such conditions as appear to the Authority to be requisite or expedient, having regard to the duties of the Authority.

Grant or refusal of licence.

5. The refusal of the Authority to grant a licence shall be communicated to the applicant in writing not later than 28 days from its decision together with a statement of reasons.

Monitoring of licensees.

6. (1) The Authority shall monitor the activities of licensees to ensure that they conform to the conditions and requirements of the licence.

(2) A licensee shall allow the Authority, and any other person authorized by it for such purpose, full access to any premises, installations, accounts and any other records and any information under the control of the licensee as the Authority may reasonably require and as it may request for the purpose of investigating any matter relevant to the licensee's compliance with these Regulations, the Act, the terms and conditions of the licence or any directive issued by or given by the Authority:

Provided that when allowing access to or providing documentation or information to the Authority, the licensee may indicate what information he considers to be of a commercially sensitive nature and may request the Authority to keep such information confidential. It shall be the Authority to decide whether the information is of a commercially sensitive nature:

Provided further that the Authority shall, in relation to the commercially sensitive information obtained from the licensee, be under the obligation of confidentiality and shall not divulge such information unless required to do so by law or by a court order.

Withdrawal, amendment or suspension of licence or imposition of specific measures.

7. Where a licensee fails to comply with any condition or conditions of the licence, the Authority may withdraw, amend or suspend such licence or impose specific measures which it deems necessary and appropriate to achieve compliance:

Provided that such measures must be proportionate to the degree of non-compliance with the conditions of the licence.

Maintenance of Records.

8. The licensee shall monitor, record and maintain all such technical, financial, customer service, administrative and operational information and records concerning licensed activities that are prescribed in the licence or that the Authority may deem necessary:

Provided that the Authority may prescribe the manner in which the licensee keeps the records and documents which fall under this regulation.

Transfer of licences.

9. (1) The licensee may not transfer or assign the licence to any other person or undertaking without the prior written approval of the Authority and unless such transfer fees, as may be prescribed by the Authority, have been paid:

Provided that the Authority may only refuse its consent to such transfer for a good and valid reason and that such refusal is communicated to the licensee and the proposed transferee in writing.

(2) Where the licensee is a body corporate or any other body of persons, a change in the control of the ownership or management of that body shall be deemed to be equivalent to the transfer of the licence, and shall be subject to the approval by the Authority. For the purpose of this sub-regulation, a transfer in the control of the ownership of a body corporate or other body of persons shall be deemed to occur in any case where a transfer of the capital, shares, stocks or other rights held in the body corporate or other body of persons leads to a change in the person holding the controlling interest therein.

Amendment, revocation and termination of licences.

10. (1) A licence granted by the Authority shall be subject to modification, revocation or termination in accordance with these regulations.

(2) A licence shall be modified:

(i) where the licensee so requests, in which case the Authority may modify the conditions or requirements of the said licence; and

(ii) where the Authority is of the opinion that a licence should be amended, it may amend such licence with or without the consent of the licensee:

Provided that, other than in the case of modifications pursuant to paragraph (ii), and required urgently in the general economic interest, the Authority shall issue a notice in the Gazette before modifying a licence stating the proposed modification or modifications, the nature of such modification or modifications and the reasons thereof. Representations or objections with respect to the proposed modifications may be made to the Authority within 28 days of the publication of such notice.

(3) A licence shall cease to be valid, in whole or in part, upon:

(i) the expiration of the term therein specified;

(ii) the occurrence of an event or of circumstances which under the terms and conditions of the licence result in its termination;

(iii) the renunciation thereto by the licensee;

(iv) the insolvency, liquidation or bankruptcy of the licensee, or a composition with his creditors.

(4) Without prejudice to regulation 8, the Authority may revoke the licence, in whole or in part, for any of the following reasons:

(i) if the licence has been granted on the basis of information which was incomplete, misleading or incorrect in any material aspect;

(ii) if the licensee fails to act on the licence by failing to provide the service or product for which he was licensed for a period exceeding 180 days from the date of issue of the licence, or if he suspends such activity for a period exceeding 180 days in any twelve month period:

Provided that the Authority may extend or curtail the period aforesaid for a good and valid reason which shall be communicated in the licence conditions;

(iii) if the licensee is in breach of an obligation imposed by or under these regulations or contained in the licence, which in the opinion of the Authority is of a sufficient degree of severity to justify the revocation of the licence, and, in such case where the breach is capable of remedy, where the licensee has failed to remedy the breach within such reasonable time as the Authority may have given him for that purpose:

Provided that in any action taken further to this paragraph, the Authority shall respect the principle of proportionality and it shall communicate its intention to revoke the licence and the reasons therefor to the licensee in writing;

(iv) in the case of the occurrence of any event or circumstance which, in accordance with the terms and conditions of the licence, these Regulations and, or the Act, authorise the Authority to revoke it.

(5) Upon revocation of the whole of the licence, such licence shall cease to be a valid licence:

Provided that where the licence is revoked only in part, the validity of the licence as a whole shall only be effected if the part

of the licence revoked appears to the Authority not to be severable from the entire licence:

Provided further that the revocation of a licence shall not relieve the licensee of any liability arising from any act or omission which occurred prior to such revocation.

Natural gas undertakings.

11. (1) Enemalta Corporation, or a related undertaking set up for the purpose, shall be responsible for examining the impacts of, and if necessary developing, interconnections with other systems. This shall be monitored by, and where necessary directed by, the Authority, in view of the possible impact of such development on competition within the market.

(2) The following rules shall apply to operators:

(a) Each distribution system operator shall operate, maintain and develop under economic conditions a secure, reliable and efficient system, with due regard for the environment.

(b) In any event, the distribution system operator shall not discriminate between system users or classes of system users, particularly in favour of its related undertakings.

(c) Each distribution system operator shall provide any other distribution system operator, and, or any transmission, and, or LNG system operator, and, or storage system operator with sufficient information to ensure that the transport and storage of natural gas takes place in a manner compatible with the secure and efficient operation of the interconnected system.

(d) Each distribution system operator shall provide system users with the information they need for efficient access to the system.

(e) Without prejudice to any legal duty to disclose information, each operator shall preserve the confidentiality of commercially sensitive information obtained in the course of carrying out its business, and shall prevent information about its own activities which may be commercially advantageous from being disclosed in a discriminatory manner. Operators shall not, in the context of sales or purchases of natural gas by related undertakings, abuse commercially sensitive information obtained from third parties in the context of providing or negotiating access to the system.

(f) Within such time and following such consultation as the Authority may establish, the Authority may direct any distribution system operator to prepare and publish a network code, subject to the approval of the Authority, establishing the basic technical design and operational requirements for the connection to the distribution system of LNG facilities, storage facilities, other transmission or distribution systems, and direct lines, which are developed and made public. The network code shall be objective and non-discriminatory. The network code shall be notified in accordance with the Procedure for the Provision of Information in the field of Technical Standards and Regulations and of Rules of Information Society Services Regulations, 2001.

L.N. 65 of 2001.

(g) The undertaking shall implement the consumer protection measures in Schedule A to these regulations, to household customers.

New infrastructure.

12. (1) An application for the construction of new infrastructure shall include proposals for tariffs for access to, and conditions for the organisation of, storage, linepack and ancillary services and to upstream pipeline networks, for approval by the Authority. Such access shall not extend to ancillary services and temporary storage that are related to LNG facilites and are necessary for the re-gasification process and subsequent delivery to the transmission system and to parts of upstream pipeline networks and facilities which are used for the local production operations at the site of a field where gas is produced.

(2) Undertakings may be exempted by the Authority from the requirement to provide access to third parties to their interconnectors, LNG and storage facilities, under the following conditions:

(a) the investment must enhance competition in gas supply and enhance security of supply;

(b) the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted;

(c) the infrastructure must be owned by a natural or legal person which is separate, at least in terms of its legal form, from the system operators in whose systems that infrastructure will be built;

(d) charges are levied on users of that infrastructure;

(e) the exemption is not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected.

(3) The authority shall submit to the Minister for his approval any exemptions granted under this regulation, together with any conditions attached to this exemption.

(4) The exemption decision, including any conditions, shall be duly reasoned and published.

(5) In the case of an interconnector any exemption decision shall be taken after consultation with the other Member States or regulatory authorities concerned.

(6) The exemption decision shall be notified, without delay, by the Authority to the Commission, together with all the relevant information with respect to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:

(a) the detailed reasons on the basis of which the regulatory authority granted the exemption, including the financial information justifying the need for the exemption;

(b) the analysis undertaken of the effect on competition and the effective functioning of the internal gas market resulting from the grant of the exemption;

(c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;

(d) in case the exemption relates to an interconnector, the result of the consultation with the Member States concerned or regulatory authorities;

(e) the contribution of the infrastructure to the diversification of gas supply.

(7) The Authority shall amend or withdraw the decision to grant an exemption as instructed by the Commission or the Minister.

Functions of the Authority.

13. (1) The Authority shall be responsible for ensuring non-discrimination, effective competition and the efficient functioning and monitoring of the market in natural gas. The Authority shall monitor in particular:

(i) the rules on the management and allocation of interconnection capacity, in conjunction with the regulatory authority or authorities of those Member States with which interconnection exists;

(ii) any mechanisms to deal with congested capacity within the national gas system;

(iii) the time taken by operators to make connections and repairs;

(iv) the publication of appropriate information by system operators concerning interconnectors, grid usage and capacity allocation to interested parties, taking into account the need to treat non-aggregated information as commercially confidential;

(v) the effective unbundling of accounts, to ensure there are no cross-subsidies between transmission, distribution, storage, LNG and supply activities;

(vi) the access conditions to storage, linepack and to other ancillary services as provided for in Regulation 12(1);

(vii) the extent to which undertakings fulfil their tasks in accordance with Regulation 11; and

(viii) the level of transparency and competition.

The Authority shall publish an annual report on the outcome of its monitoring activities.

(2) The Authority shall be responsible for fixing or approving prior to their entry into force, at least the methodologies used to calculate or establish the terms and conditions for:

(i) connection and access to national networks, including transmission and distribution tariffs. These tariffs, or methodologies, shall allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks;

(ii) the provision of balancing services.

(3) Notwithstanding sub-regulation (2), the Authority shall submit, for formal decision, to the Minister the tariffs or at least the methodologies referred to in that sub-regulation as well as the modifications in sub-regulation (4). The Minister shall, in such a case, have the power to either approve or reject a draft decision submitted by the Authority, and may refer such tariffs back to the Authority for revision. The Authority shall be bound by any directions given by the Minister.

These tariffs or the methodologies or modifications thereto shall be published together with the decision on formal adoption. Any formal rejection of a draft decision shall also be published, including its justification.

(4) The Authority may require transmission, LNG and distribution system operators, if necessary, to modify the terms and conditions, including tariffs and methodologies referred to in sub-regulations (1), (2) and (3), to ensure that they are proportionate and applied in a non-discriminatory manner.

(5) Any party having a complaint against a transmission, LNG or distribution system operator with respect to the issues mentioned in sub-regulations (1), (2) and (4) and in regulation 3(h) may refer the complaint to the Authority which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the Authority. This period may be further extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.

(6) Any party to whom a decision of the Authority relates and who has a right to complain from a decision on methodologies taken pursuant to sub-regulations (2), (3) or (4) or, where the Authority has a duty to consult, concerning the proposed methodologies, may, not later than two months from the date of publication of the decision or of the proposal for a decision, submit a request to the Authority in writing to revise such a proposal or decision. Such a complaint shall not have suspensive effect.

(7) The Authority shall contribute to the development of the internal market and of a level playing field by cooperating with regulatory authorities in other Member States and with the Commission in a transparent manner.

(8) The Authority shall monitor, in particular, the balance between supply and demand on the national market, the level of expected future demand and available supplies, envisaged additional capacity being planned or under construction, and the quality and level of maintenance of the networks, as well as measures to cover peak demand and to deal with shortfalls of one or more suppliers. The Authority shall publish, by the 31st July of each year at the latest a report outlining the findings resulting from the monitoring of these issues, as well as any measures taken or envisaged to address them and shall forward this report to the Commission forthwith.

(9) In the event of a sudden crisis in the energy market or where the physical safety or security of persons, apparatus or installations or system integrity are threatened, the Authority may be instructed by the Minister to temporarily take the necessary safeguard measures which shall cause the least possible disturbance to the functioning of the internal market and shall not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

(10) The Authority shall, insofar as necessary to carry out the functions assigned to it by these regulations, have right of access to the accounts of natural gas undertakings. The Authority shall preserve the confidentiality of commercially sensitive information.

Compliance orders.

14. (1) Where the Authority becomes aware, whether through carrying out an investigation or otherwise, that any person subject to these regulations has contravened any of the provisions contained therein, it shall issue a compliance order to the person concerned, ordering him to comply immediately with the provisions of the said regulations.

(2) Any person who fails to abide by the provisions of a compliance order issued by the Authority shall, without prejudice to any other liability under these regulations, the Act or any other law, be guilty of an offence and be liable, on conviction, to a fine (*multa*) of not less than one hundred liri and not more than one thousand liri for each day during which the offence subsists:

Provided that such aggregate fines (*multa*) shall, not exceed the amount of ten thousand liri.

Offences and penalties.

15. (1) Any undertaking who contravenes any of the provisions of these regulations or of a licence or approval issued thereunder, shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not more than ten thousand liri.

(2) Any person who, when information with respect to these regulations is requested by the Authority, knowingly or recklessly:

(a) gives any false, inaccurate or misleading information; or

(b) supplies incomplete information; or

(c) fails without reasonable cause to supply information requested within the time given; or

(d) prevents or hinders any investigation; or

(e) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in any material respect,

shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than one hundred liri and not more than one thousand liri.

(3) Without prejudice to sub-regulations (1) and (2) of this regulation, where any person fails to comply with the provisions of these regulations for a period exceeding six months, the Authority may revoke his or her licence.

16. (1) The Gas Transit (Grid Requirements) Regulations, 2003 shall be repealed with effect from the 1st July, 2004, without prejudice to contracts concluded pursuant to the said regulations, which shall continue to be valid and to be implemented under the terms of the said Directive.

Repeals L.N. 13 of 2003 and L.N. 238 of 2002.

(2) The Natural Gas (Marketing) Regulations, 2002 shall be repealed with effect from the 1st July, 2004.

SCHEDULE A

Measures on consumer protection

Without prejudice to rules on consumer protection, the measures referred to in regulation 11 are to ensure that customers:

(a) have a right to a contract with their gas service provider that specifies:

– the identity and address of the supplier;

– the services provided, the service quality levels offered, as well as the time for the initial connection;

– if offered, the types of maintenance service offered;

– the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

– the duration of the contract, the conditions for renewal and termination of services and of the contract, the existence of any right of withdrawal;

– any compensation and the refund arrangements which apply if contracted service quality levels are not met; and

– the method of initiating procedures for settlement of disputes.

Conditions shall be fair and well known in advance. In any case, this information should be provided prior to the conclusion or confirmation of the contract. Where contracts are concluded through intermediaries, the above information shall also be provided prior to the conclusion of the contract;

(b) are given adequate notice of any intention to modify contractual conditions and are informed about their right of withdrawal when the notice is given. Service providers shall notify their subscribers directly of any increase in charges, at an appropriate time no later than one normal billing period after the increase comes into effect. Member States shall ensure that customers are free to withdraw from contracts if they do not accept the new conditions, notified to them by their gas service provider;

(c) receive transparent information on applicable prices and tariffs and on standard terms and conditions, in respect of access to and use of gas services;

(d) are offered a wide choice of payment methods. Any difference in terms and conditions shall reflect the costs to the supplier of the different payment

systems. General terms and conditions shall be fair and transparent. They shall be given in clear and comprehensible language. Customers shall be protected against unfair or misleading selling methods;

(e) shall not be charged for changing supplier.

(f) should they be connected to the gas system, are informed about their rights to be supplied, under the national legislation applicable, with natural gas of a specified quality at reasonable prices.

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