

Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001

11 of 2001

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Gujarat Gas (Regulation of Transmission, Supply and

Distribution) Act, 2001

11 of 2001

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An Act to provide for regulation of transmission, supply and distribution of gas, in the interests of general public and to promote gas industry in the State and for that purpose to establish Gujarat Gas Regulatory Authority and for matters connected therewith or incidental thereto. It is hereby enacted in the Fifty-second Year of the Republic of India as follows :

CHAPTER 1

Preliminary

1. Short title, extent and commencement :-

(1) This Act may be called the Gujarat Gas (Regulation of Transmission, Supply and Distribution) Act, 2001.

(2) It extends to the whole of the State of Gujarat.

(3) This section shall be deemed to have come into force on 19th December, 2000 and the remaining provisions shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,

(a) "Authority" means the Gujarat Gas Regulatory Authority established under Sec. 4;

(b) "bulk consumer" means a person who consumes gas exceeding twenty-five thousand cubic meters per day;

(c) "Chairperson" means the Chairperson of the Authority;

(d) "Commissioner" means the Commissioner of Gas appointed under Sec. 3;

(e) "committee" means the committee constituted under Sec. 11;

(f) "common carrier" means the basis of arrangements by which an access has to be provided to any person for the transmission and distribution of gas through pipelines;

(g) "distribution" means distribution of gas at a low pressure by

means of pipelines to a consumer other than a bulk consumer;

(h) "gas" means a matter in gaseous state which predominantly consists of methane;

(i) "high pressure" means such pressure as the State Government may, from time to time, by notification in the Official Gazette, specify in terms of kilograms per square centimeter;

(j) "licence" means a licence granted under Sec. 26; (k) "licensee" means a person holding a licence;

(l) "low pressure" means such pressure as the State Government may, from time to time, by notification in the Official Gazette, specify in terms of kilograms per square centimeter;

(m) "member" means a member of the Authority and includes the Chairperson;

(n) "pipeline corridors" means pipelines laid or to be laid together with sufficient adjacent land;

(o) "prescribed" means prescribed by rules;

(p) "regulations" means regulations made under this Act;

(q) "rules" means rules made under this Act;

(r) "specified company" means such company or companies the main object of which is the transmission of gas as the State Government may, by notification in the Official Gazette, specify;

(s) "supplier" means a person who supplies gas;

(t) "supply" means supply of gas by means of pipelines but does not include distribution;

(u) "transmission" means transmission of gas at a high pressure by means of pipelines; and

(v) "Tribunal" means the Tribunal constituted under Sec. 30.

CHAPTER 2

Commissioner of Gas

3. Commissioner :-

(1) The State Government may, by notification in the Official Gazette, appoint an officer to be the Commissioner, who shall exercise such powers and perform such functions and duties as are

conferred or imposed on him by or under this Act.

(2) The Commissioner shall exercise the powers and perform the functions and duties conferred or imposed on him under this Act subject to the control of the State Government.

(3) To assist the Commissioner in exercising his powers and performance of his functions and duties under this Act, the State Government may appoint such officers and persons and give them such designation (if any), as the State Government thinks necessary.

CHAPTER 3

Establishment and Constitution of Authority

4. Establishment and incorporation of Authority :-

(1) The State Government shall, by notification in the Official Gazette, establish an Authority by the name of the Gujarat Gas Regulatory Authority with effect from such date as may be specified in the notification.

(2) The Authority shall be a body corporate with perpetual succession and common seal and may sue or be sued in its corporate name and shall, subject to the provisions of this Act, be competent to acquire, hold or dispose of property, both movable and immovable, and to contract and do all things necessary for the purposes of this Act.

5. Headquarters of Authority :-

The headquarters of the Authority shall be at Ahmedabad or at such other place as the State Government may, by a notification in the Official Gazette, specify.

6. Constitution of Authority :-

(1) The Authority shall consist of a Chairperson and two other members to be appointed by the State Government.

(2) Out of the three members

(a) one shall be a person who has special knowledge and professional experience in the field of engineering related to transmission, supply and distribution of gas or designing, laying and operating of pipelines therefor,

(b) one shall be a person who has special knowledge and professional experience in the field of administration, economics,

commerce, finance, law or management,

(c) one shall be a person who possesses qualifications either under clause (a) or (b).

(3) A member of the Authority shall render whole time service and shall not hold any other office during the tenure of his office.

7. Term of office and conditions of service of members :-

(1) The Chairperson and the other members shall hold office for a period of three years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever period is less.

(2) The salary and allowances payable to and other conditions of service of a member shall be such as may be prescribed :

Provided that the salary and allowances and other conditions of service of a member shall not be varied to his disadvantage during the tenure of his office.

8. Filling up of vacancies :-

On occurrence of any vacancy in the office of a member on account of death, resignation or any other reason, the same shall be filled in by the State Government in the manner provided in Sec. 6.

9. Disqualifications :-

A person shall be disqualified for being appointed or being a member of the Authority if, such person

(a) is a member of Parliament or of any States Legislature or of any local authority;

(b) is a member of a political party;

(c) is, or at any time, has been adjudged an insolvent or has suspended payment of his debts or has compounded with his creditors;

(d) is of unsound mind and stands so declared by a competent Court;

(e) is, or has been convicted of any offence which, in the opinion of the State Government involves moral turpitude;

(f) has either directly or indirectly any financial or other interest which is likely to affect prejudicially his functioning as a member;

or

(g) has either directly or indirectly any financial or other interest in

(i) transmission, supply or distribution of gas;

(ii) production, sale or supply of gas whether used in any industry or not;

(iii) manufacture of, or any dealings in, plant and machinery, equipments, apparatus, or fittings for the matters specified in sub-clause (i), or

(iv) any body which provides professional services in relation to matters specified in sub-clauses (i), (ii) and (iii).

10. Removal and resignation of member :-

(1) Notwithstanding anything contained in sub-sec. (1) of Sec. 7, the State Government may, at any time, remove any member from office, if, in its opinion, such member

(a) is or has become, subject to any of the disqualifications mentioned in Sec. 9,

(b) has been guilty of misconduct in discharge of his duties,

(c) has become physically or mentally incapable of discharging his duties as a member,

(d) has so abused his position as to render his continuance in office prejudicial to public interest, or

(e) has without reasonable cause refused or failed to perform his duties for a period of not less than three months :

Provided that no member shall be removed from his office

(i) on the ground specified in clause (f) or (g) of Sec. 9 or clause (b), (c) or (d) of sub-sec. (1), unless the committee on a reference made to it in this behalf by the State Government, has after an inquiry including an opportunity of being heard to the member, reported that the member is liable to be removed on such ground;

(ii) on any other ground, unless an opportunity of being heard is given to the member.

(2) A member in respect of whom a reference has been made under clause (i) of the proviso to sub-sec. (1) shall not perform his

functions as a member until the State Government removes the member from his office or decides not to remove the member from his office, on receipt of the report of the Committee on such reference.

(3) A member may resign from his office by giving notice in writing, for such period as may be prescribed, to the State Government, and on such resignation being accepted by the State Government, he shall be deemed to have vacated his office.

11. Committee for inquiry :-

(1) For the purpose of Sec. 10, the State Government may, by notification in the Official Gazette, constitute a committee consisting of not less than three members who shall be officers of a rank not below that of a Secretary to the State Government to be nominated by the State Government, ex-officio.

(2) The member who is senior most in service shall be the Chairman of the committee.

(3) The committee shall follow such procedure for disposal of its business as may be prescribed.

12. Prohibition of appearance before Authority etc. on ceasing to be a member. A person who ceases to be a member shall not :-

(a) be entitled to appear for a period of three years in any proceedings before the Authority as a representative of any person from the date of such cesser;

(b) acquire either directly or indirectly any financial or other interest of the nature specified in clause (g) of Sec. 9 for a period of two years from the date of such cesser;

(c) accept employment in a company or its subsidiary, which carries on the business of transmission or distribution, for a period of three years from the date of such cesser.

Explanation. For the purpose of this clause, the expression 'company' shall have the same meaning as assigned to it in clause (a) of Explanation to Sec. 36.

13. Meetings of Authority :-

(1) The Authority shall meet at such time and such place and shall,

subject to sub-sees. (2) and (3), observe such rules of procedure in regard to transaction of its business at its meetings (including the quorum at such meetings) as may be provided by the regulations.

(2) If the Chairperson is for any reason unable to attend a meeting of the Authority, the other member shall preside at the meeting.

(3) All the questions at a meeting of the Authority shall be decided by a majority of the members present and voting, and in case of an equality of votes, the Chairperson or in his absence, the person presiding, shall have and exercise a second or casting vote.

14. Officers and employees of Authority :-

(1) The Authority may, with the approval of the State Government, determine such number and category of officers and employees as it considers necessary for the efficient performance of its functions.

(2) The manner of recruitment of, the salary and allowances payable to, and other conditions of service of officers and employees, shall be such as may be determined by the regulations.

15. Consultants :-

The Authority may, for the purpose of enabling it to perform its functions, appoint consultants on such terms and conditions as may be determined by the regulations.

16. Acts and proceedings presumed to be valid :-

(1) No act or proceeding of the Authority shall be questioned or be invalid on the ground merely of the existence of any vacancy in, or any defect, in the constitution of the Authority.

(2) No act done by any person acting in good faith as a member shall be deemed to be invalid merely on the ground that he was disqualified to be a member or that there was any other defect in his appointment.

CHAPTER 4

Functions and Powers of Authority

17. Functions of Authority :-

Subject to the provisions of this Act, the Authority shall perform the following functions, namely :

(a) to regulate transmission, supply and distribution of gas in the State and laying of pipelines therefor,

- (b) to promote gas industry in the State in accordance with the direction given by the State Government,
- (c) to give direction to a licensee for ensuring compliance of terms and conditions of a licence held by him,
- (d) to regulate the charges for transmission,
- (e) to promote efficiency, economy and safety in the use of gas in the State
- ,
- (f) to give direction to a supplier or bulk consumer for ensuring compliance by him of the standards of safety, operation and environment for supply or bulk consumption of gas,
- (g) to set and enforce standards of safety, operation and environment for transmission, supply and distribution and bulk consumption of gas,
- (h) to lay down by regulations the principles of common carrier for transmission and distribution and to enforce the same,
- (i) to adjudicate upon the disputes and difference amongst licensees and a suppliers, or between the specified company and a licensee or a supplier or between a supplier and a person who buys gas from supplier and to refer matters for arbitration if considered necessary, in accordance with the provisions of this Act,
- (j) to hold, wherever necessary, an inquiry in accordance with such procedure as may be prescribed,
- (k) to advise the State Government on matters relating to transmission, supply and distribution of gas in the State, and
- (l) to perform such other functions as may be prescribed or as are supplemental, incidental or consequential to any of the functions entrusted to it by or under this Act.

18. Powers of Authority :-

(1) The Authority shall, for the purposes of any inquiry under this Act, have the powers of a Civil Court while trying a suit, in respect of the following matters, namely :

- (a) summoning and enforcing the attendance of any witness and examining him on oath,

- (b) requiring the discovery and production of any document or other material object producible as evidence,
- (c) receiving of evidence on affidavits,
- (d) requisitioning of any public record or a copy thereof from any Court or office,
- (e) issuing commissions for examination of witnesses or documents,
- (f) reviewing of its decisions, directions and orders, and
- (g) any other matter which may be prescribed.

(2) The Authority shall have powers to pass such interim order in any matter before it, as it may consider appropriate.

(3) Where the Authority is of opinion that it is necessary so to do for the purposes of this Act, it may require by an order in writing to a specified company or any person

(a) to produce before, or to allow to be examined by, an officer specified in the said order such books, accounts or other documents in the custody or control of that company or person, relating to any matter concerning the transmission, supply and distribution or laying of pipelines therefor as may be specified in the order, and

(b) to furnish to the officer specified in the order such information in its or his possession, power or control as may be specified in the order.

(4) The Authority may require a specified company or any person

(a) to produce before or to allow to be examined by an officer of the Authority authorised by it in this behalf, such books, accounts or other documents relating to the functioning of the company engaged in transmission of gas or of any undertaking engaged in supply, distribution or use of gas, in the custody or under the control of such company or person,

(b) to furnish to the authorised officer such information in the possession, power or control of such company or person for the purposes of performance of the functions by the Authority.

(5) Where during any inquiry or proceeding under this Act, the Authority has reason to believe that any books of accounts or documents of or relating to the specified company engaged in transmission of gas or any person engaged in supply, distribution or

use of gas in relation to which or whom such inquiry is made or proceedings are undertaken are being or may be destroyed, mutilated, altered, falsified or secreted, the Authority may by written order authorise any officer of the Authority to enter and search any place of business of the company or person or any other place where the Authority has reason to believe that the company or person keeps or is for the time being keeping books or accounts or documents and to seize the same and after granting a receipt therefor retain the same for such period so long as is necessary in connection with such inquiry or proceeding.

(6) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches and seizures shall apply, so far as may be, to the searches and seizures made under sub-sec. (5).

(7) The Authority may, by a general or special order call upon a specified company or any person to furnish to the Authority periodically, or as and when required, any information concerning its or his activities related to transmission, supply, distribution of gas or laying of pipelines therefor or use of gas.

(8) The Authority may, for the purpose of placing gas pipelines, appliances and apparatus, by an order, confer

(i) upon a specified company for transmission, and

(ii) upon a licensee or any other person for supply and distribution, any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 (13 of 1885) with respect to placing of telegraph lines and posts subject to such conditions as the Authority may specify in such order.

CHAPTER 5

Finance, Accounts, Audit and Reports

19. Fund of Authority :-

(1) The Authority shall have its own fund and all receipts of the Authority shall be carried thereto and all payments by the Authority shall be made therefrom.

(2) The Authority may accept grants and subventions from the State Government or a local authority for the purposes of this Act.

(3) The Authority may spend such sums as it thinks fit for the performance of its functions under this Act and such sums shall be treated as expenditure payable out of the Fund of the Authority.

(4) All moneys belonging to the Fund of the Authority shall be deposited in such bank or invested in Government securities or in such other manner, as the State Government may, by general or special order, direct.

20. Budget of Authority :-

The Authority shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Authority and forward the same to the State Government.

21. Accounts and audit of Authority :-

(1) The Authority shall maintain proper accounts and other relevant record and prepare an annual statement of accounts in such form as may be prescribed, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Authority shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Authority.

(4) The accounts of the Authority, as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the State Government by the Authority and the State Government shall cause the audit report to be laid, as soon as may be, after it is received, before the State Legislature.

22. Annual report of Authority :-

(1) The Authority shall prepare once in every year in such form and at such time, as may be prescribed, an annual report including a

summary of its activities during the previous year and copies of the report shall be forwarded to the State Government.

(2) A copy of the report received under sub-sec. (1) shall be laid, as soon as may be, after it is received, before the State Legislature.

CHAPTER 6

Transmission of Gas

23. Specified company to transmit gas in State :-

(1)

(a) No person other than a specified company and a person referred to in sub-sec. (1) of Sec. 55 shall carry on the business of transmission in the State.

(b) Subject to the rules, if any, a specified company shall carry on the business of transmission in the State.

(2) Without prejudice to the generality of the provision contained in sub-sec. (1), but subject to the other provisions of this Act, a specified company shall

(a) establish or cause to be established a transmission system (which shall include laying of pipelines) for conveyance of gas on the principle of common carrier and operate or cause to be operated the same,

(b) determine transmission charges,

(c) plan and develop pipeline corridors for transmission system in the State, and

(d) maintain such standards of efficiency, economy and safety in relation to its business of transmission as laid down by the Authority.

24. Specified company only to carry on business of transmission of gas :-

Except to the extent otherwise expressly provided in sub-sec. (1) of Sec. 55, on and with effect from the date of coming into force the remaining provisions of this Act, the specified company only shall carry on the business of transmission in the State.

CHAPTER 7

Licensing of Distribution of Gas

25. Prohibition on distribution without licence :-

(1) No person shall carry on business of distribution in the State, except under a licence granted under this Act.

(2) No person shall lay pipelines for distribution in the State unless he is a licensee.

26. Grant of licence :-

(1)

(a) A person may make an application to the Commissioner for grant of a licence for carrying on the business of distribution.

(b) A person carrying on the business of distribution on the date of coming into force the remaining provisions of this Act (hereinafter referred to 'as the said date') shall, within three months from the said date, make an application to the Commissioner for grant of a licence for carrying on the business of distribution, and

(i) a person who makes such an application shall be deemed to have been authorised to carry on such business from the said date till the date on which he is either granted or refused a licence,

(ii) a person who does not make such application within the said period of three months shall be deemed to be carrying on business of distribution without a licence.

(2) Every application under sub-sec. (1) shall be made in such form, and shall contain such particulars; including those regarding the competency of the applicant to undertake the business of distribution and accompanied by such fees, as may be prescribed.

(3) The Commissioner may grant a licence to the applicant in such form containing such terms and conditions and on payment of such fees, as may be prescribed.

(4) For the purpose of granting a licence under sub-sec. (3), the Commissioner shall, so far as may be, follow the procedure of public competitive bidding laid down in the Gujarat Infrastructure Development Act, 1999 (Guj. 11 of 1999).

(5) Unless it is specifically provided in the terms of a licence, the grant of a licence to a person shall not in anyway hinder or restrict the power of the Commissioner to grant a licence to another person in respect of the same area of distribution and the licensee shall not be entitled to claim any exclusivity.

27. Amendment of licence :-

Where in its opinion, the public interest so requires, the State Government may on the application of a licensee, direct the Commissioner to make such amendments in the terms and conditions of a licence as it thinks fit having regard to the objects and purposes of this Act and the Commissioner shall make amendments in the licence accordingly.

28. Revocation and suspension of licence :-

If the Commissioner is satisfied either on a reference made to it or otherwise that

(a) a licence granted under Sec. 26 has been obtained by misrepresentation as to an essential fact, or

(b) the licensee has, without reasonable cause, failed to comply with the conditions subject to which the licence has been granted or has contravened any of the provisions of this Act or the rules or the regulations made thereunder, then without prejudice to any other penalty to which the licensee may be liable under this Act, the Commissioner may, after giving the licensee an opportunity of showing cause

(i) revoke the licence on the ground stated in clause (a), or

(ii) revoke the licence or forfeit the sum, if any, or any portion thereof deposited as security for due performance of the conditions subject to which the licence has been granted, on the ground stated in clause (b), or

(iii) suspend the licence for such period as he thinks fit, on the ground stated in clause (b).

CHAPTER 8

Arbitration and Appeals

29. Arbitration by Authority :-

(1)

(a) Any dispute arising between a specified company and a licensee or between licensees or between a person who supplies gas and a person who buys gas from him, shall be referred to the Authority.

(b) The Authority may adjudicate the matter or nominate a person to adjudicate and settle such dispute.

(c) The procedure to be followed in connection with such

adjudication shall be such as may be prescribed by the regulations.

(2) Where an adjudication is made by the nominee appointed by the Authority, it shall be filed before the Authority and the Authority shall pass such order as deemed fit including an order

(a) confirming and enforcing the adjudication,

(b) setting aside or modifying the adjudication, or

(c) remitting the adjudication to the nominee for reconsideration.

(3) The adjudication made by the Authority under sub-sec. (1) or an order passed by the Authority under sub-sec.(2) shall be enforceable as if it were a decree of a Civil Court.

(4) The Authority or, as the case may be, a nominee may, at any time before the commencement or during the pendency of proceedings under sub-sec. (1), make such interim order as the Authority or, as the case may be, the nominee deems fit.

30. Constitution of Tribunal :-

(1) The State Government shall constitute a Tribunal to be called the Gujarat Gas Tribunal to discharge the functions conferred on the Tribunal by or under this Act.

(2) The Tribunal shall consist of two members who shall be appointed by the State Government, out of whom

(a) one shall be a person who is or has been a Judge of the High Court, and

(b) one shall be a person who is or has held the post not below the rank of the Secretary to the State Government.

(3) The term of office and conditions of service of the members of the Tribunal shall be such as may be prescribed.

(4) The State Government may terminate the appointment of the member of the Tribunal before the expiry of the term of his office if such member,

(a) is adjudged an insolvent, or

(b) engages during his term of office in any paid employment outside the duties of his office, or

(c) is or becomes in any way concerned or interested in any

contract or agreement made by or on behalf of the State Government or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member, or

(d) is in the opinion of the State Government, unfit to continue in office by reason of infirmity of mind or body, or

(e) is convicted of an offence involving moral turpitude.

(5) Subject to such conditions and limitations as may be prescribed, the Tribunal shall have power to award cost and the amount of such costs shall be recoverable from the person ordered to pay the same as arrears of land revenue.

(6) Subject to the previous sanction of the State Government, the Tribunal shall, for the purpose of regulating its procedure (including the place or places at which the Tribunal shall sit) and the disposal of its business, make regulations consistent with the provisions of this Act and rules made thereunder.

(7) The regulations made under sub-sec. (6) shall be published in the Official Gazette.

31. Powers of Tribunal :-

(1) For the purpose of exercising its jurisdiction under this Act, the Tribunal shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) issuing commissions for the examination of witnesses;

(d) such other matters as may be prescribed.

(2) The Tribunal shall be deemed to be A Court for the purpose of Sec. 5 of the Limitation Act, 1963 (XXXVI of 1963).

32. Appeals :-

(1) An appeal shall lie to the Tribunal against the following orders and award, namely :

(a) an order refusing to grant a licence under Sec. 26,

(b) an order revoking or suspending a licence or forfeiting the sum of deposit under Sec. 28,

(c) an award made by the Authority under sub-sec. (1) or an order passed by the Authority under sub-sec. (2) of Sec. 29.

(2) No appeal shall be entertained unless it is filed within a period of sixty days from the date of communication of the order or award.

(3) The Tribunal may admit an appeal after the period of limitation specified in sub-sec. (2), if the appellant satisfies the Tribunal that he had sufficient cause for not filing appeal within such period.

(4) In computing the period of limitation, the provisions of Sees. 4 and 12 of the Limitation Act, 1963 (XXXVI of 1963) shall, so far as may be, apply.

(5) Notwithstanding anything contained in the Bombay Court Fees Act, 1959 (Bom. XXXVI of 1959), an appeal under this section shall bear a court fee stamp of such value as may be prescribed.

33. Bar of jurisdiction of Civil Court :-

(1) No Civil Court shall have jurisdiction to deal with or decide any question which the State Government, the Authority or any officer appointed by the Authority or the Commissioner or the Tribunal is empowered to deal with or decide by or under this Act.

(2) No order passed under this Act or any rules or regulations made thereunder by the State Government, the Authority or any officer appointed by the Authority, the Commissioner or by the Tribunal, shall be called in question in any Civil Court.

CHAPTER 9

Offences and Penalties

34. Penalty for contravention of provisions of Secs. 23, 25 and 55. :-

(1) Whoever carries on business of transmission in contravention of clause (a) of sub-sec. (1) of Sec. 23 or of clause (a) or (b) of sub-sec. (2) of Sec. 55, or

(2) Whoever carries on business of distribution or lays pipelines for such distribution without a licence in contravention of Sec. 25, shall on conviction, be punished with imprisonment which may extend to six months or with fine not exceeding five lakhs of rupees or with both and in the case of a continuing offence with an additional fine

not exceeding twenty thousand rupees for every day after the first, during which the offence continues.

35. General penalty :-

Where a licensee, supplier, bulk consumer or any other person fails without any reasonable cause, to comply with any order, direction or requisition lawfully made or given under any provision of this Act or any rules or regulations made thereunder, he shall, on conviction be punished with imprisonment which may extend to three months or with fine not exceeding two lakhs of rupees or with both and in the case of a continuing offence with an additional fine not exceeding ten thousand rupees for everyday after the first, during which the offence continues.

36. Offences by companies :-

(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-sec. (1), where an offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purposes of this section

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

37. Cognizance of offences :-

(1) No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by an officer of the Authority generally or specially authorised by it in this behalf.

(2) Notwithstanding anything contained in Sec. 200 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall not be necessary to examine the authorised officer of the Authority when cognizance of an offence is taken on a report of such officer under sub-sec. (1).

38. Jurisdiction of Court :-

No Court inferior to that of a Metropolitan Magistrate or a Magistrate of the First Class shall try an offence punishable under this Act.

39. Compounding of offences :-

(1) The Commissioner may, either before or after the institution of proceeding for any offence punishable under Sec. 34 or 35 or under any rules or regulations accept from any person charged with such offence by way of composition of the offence, a sum not exceeding the maximum penalty of fine with which the offence is punishable.

(2) On payment of such sum, as may be determined by the Commissioner under sub-sec. (1), no further proceedings shall be taken against the accused person in respect of the same offence.

CHAPTER 10

Miscellaneous

40. Standards of performance :-

(1) The Authority may, in consultation with the specified company and licensees and, if deemed fit, with such other persons as it thinks necessary, by an order

(a) lay down

(i) such standards of overall performance in connection with transmission and distribution as in its opinion is necessary for a specified company or, as the case may be, a licensee to achieve,

(ii) such standards in connection with efficient use of gas by consumers as in its opinion are necessary,

(b) prescribe operation codes including network code to be complied with by a specified company, licensees and suppliers,

(c) prescribe safety regulations for operation of transmission system and distribution system and use of gas.

(2) The order made under sub-sec. (1) shall be published in such manner as the Authority thinks fit.

41. Information on standards of performance :-

The Authority may in consultation with licensees and if deemed fit, with such other persons as it thinks necessary, prescribe by regulations the circumstances in which the licensees shall inform the consumers of gas of their rights in relation to distribution to them and compensation to be paid by the licensees to the consumers for any delay or default committed by the licensees in distribution to consumers.

42. Information with respect to level of performance :-

(1) The Authority may, from time to time, collect information with respect to

(a) the fines or penalties levied on licensees under this Act, and

(b) the levels of performance achieved by a specified company in connection with the transmission and by the licensees in connection with distribution and efficient use of gas by consumers.

(2) For the purposes of sub-sec. (1), each licensee shall, on or before such date in each year as may be specified by the Authority in a direction issued in that behalf, furnish to the Authority, the following information with respect to each standard laid down under clause (a) of sub-sec. (1) of Sec. 40, namely :

(a) the number of cases in which penalties are levied and the aggregate value thereof, and

(b) such information regarding the level of performance achieved by a licensee as required by the direction.

(3) The Authority may, not less than once in every year, publish in such form and in such manner as it may deem fit, such of the information collected by it or furnished to it under this section.

43. Information relating to financial matters :-

(1) The Authority may by notice in newspapers or in such other manner as in its opinion best calculated, call upon all persons carrying on the business of transmission, distribution or supply, or

any class of them, to furnish such information or returns as may be stated therein relating to their financial matters.

(2) The form in which the information or returns shall be furnished, the particulars which they shall contain and intervals at which they shall be furnished, shall be such as may be prescribed by the regulations.

44. Restriction on disclosure of information :-

(1) Subject to the provisions of this Act, no information relating to business of transmission, supply or distribution of gas carried on by any person shall be disclosed by the Authority without the consent of the person so long as the business is carried on, if such information

(a) is obtained by the Authority by or under this Act, and

(b) is confidential in nature.

(2) The restriction imposed by sub-sec. (1) shall not apply to the disclosure of information

(a) in any suit, prosecution or other legal proceeding,

(b) for the purpose of the State,

(c) before any authority established by law,

(d) in public interest, or

(e) in the annual report referred to in Sec. 22.

45. Recovery of fees, fines and charges :-

The fees, fines, charges and such other sums due to the Authority under this Act shall be recoverable as arrears of land revenue.

46. Application of fines and charges :-

The Authority imposing fine under this Act may direct that the whole or any part thereof shall be applied towards payment of the costs of the proceedings.

47. Proceedings before Authority and Tribunal :-

All proceedings before the Authority and the Tribunal shall be deemed to be judicial proceedings within the meaning of Sees. 193 and 228 and for the purpose of Sec. 196 of the Indian Penal Code (XLV of 1860).

48. Members, officers and employees of Authority to be

public servant :-

All members and officers and employees of the Authority, the Commissioner and all officers and persons appointed under Sec. 3 to assist him and all members of the Tribunal shall, when acting or purporting to act in pursuance of the provisions of this Act, or any rules or regulations made thereunder, be deemed to be public servant within the meaning of Sec. 21 of the Indian Penal Code (XLV of 1860).

49. Protection of action taken in good faith :-

No suit, prosecution or other legal proceeding shall lie against the Authority or any member, officer or employee of the Authority and the Commissioner and officers and persons appointed under Sec. 3 to assist him for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act, or any rules or regulations made thereunder.

50. Power of State Government to give directions to Authority :-

(1) In performance of its functions under this Act, the Authority and the Commissioner shall be bound by such directions on questions of policy as the State Government may give in writing to it from time to time :

Provided that the Authority shall be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the State Government whether the question is of a policy or not, shall be final.

51. Power of State Government to make rules :-

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

(a) the salary, allowances and other conditions of service of the members under sub-sec. (2) of Sec. 7;

(b) the period of notice to be given under sub-sec. (3) of Sec. 10;

(c) the procedure to be followed by the Committee for disposal of

its business under sub-sec. (3) of Sec. 11;

(d) the procedure in accordance with which an inquiry shall be held under clause (j) of Sec. 17;

(e) the other functions to be performed by the Authority under clause (1) of Sec. 17;

(f) the other matter in respect of which the Authority shall have power of a Civil Court under clause (g) of sub-sec. (1) of Sec. 18;

(g) the form in which and the time at which the Authority shall prepare its budget under Sec. 20;

(h) the form in which an annual statement of accounts shall be prepared by the Authority under sub-sec. (1) of Sec. 21;

(i) the form in which and the time at which the Authority shall prepare its annual report under sub-sec. (1) of Sec. 22;

(j) the rules subject to which a specified company shall carry on the business of transmission in the State under clause (b) of sub-sec. (1) of Sec. 23;

(k) the form in which an application shall be made and the particulars which it shall contain and the fees with which it shall be accompanied under sub-sec. (2) of Sec. 26;

(l) the form in which and the terms and conditions subject to which a licence shall be granted and fees to be paid therefor under sub-sec. (3) of Sec. 26;

(m) the value of Court fee stamp which an appeal shall bear under sub-sec. (5) of Sec. 32; and

(n) any other matter which has to be, or may be, prescribed under this Act.

(3) In making rules under this section, the State Government may direct that a breach thereof shall be punished with fine not exceeding five lakhs of rupees and when the breach is a continuing one, with fine not exceeding twenty thousand rupees for every day during which the breach continues after conviction for the first breach.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State

Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

52. Power to make regulations :-

(1) The Authority may, with the previous approval of the State Government, by notification in the Official Gazette, make regulations not inconsistent with this Act and the rules made thereunder, for enabling it to perform its functions under this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:

(a) the time and place of the meetings of the Authority, the procedure to be followed in regard to the transaction of its business at such meetings and the quorum necessary for transaction of business at meetings under sub-sec. (1) of Sec. 13;

(b) the manner of recruitment of, the salary and allowances payable to, and other conditions of service of officers and employees of the Authority under sub-sec. (2) of Sec. 14,

(c) the terms and conditions of appointment of consultants under Sec. 15,

(d) the principles of common carrier for transmission and distribution under Sec. 17,

(e) the circumstances in which licensees shall inform the consumers of gas about their rights and compensation to be paid under Sec. 41, and

(f) the form in which the information or return shall be furnished, the particulars which they shall contain and intervals at which they shall be furnished under sub-sec. (2) of Sec. 43.

(3) In making regulations under this section, the Authority may direct that a breach thereof shall be punished with fine not exceeding five lakhs of rupees and when the breach is a continuing one, with fine not exceeding twenty thousand rupees for every day during which the breach continues after conviction for the first

breach.

(4) All regulations made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

53. Power to remove difficulties :-

If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provision, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty :

Provided that no such order shall be made under this section after the expiry of three years from the commencement of this Act.

54. Transitional provision :-

(1) Until the Gujarat Gas Regulatory Authority is duly established and constituted under this Act for the first time, its functions and powers under this Act shall be performed and exercised by the State Government or such officer as may be authorised by the State Government by notification in the Official Gazette.

(2) Anything done or any action taken by the State Government or the officer so authorised in the performance of the functions or the exercise of the powers of the Authority under sub-sec. (1), shall be binding on the Authority when it is so established and constituted.

55. Savings :-

(1) Any person who has been carrying on the business of transmission at any pressure in the State before the date of commencement of this Act (hereinafter in this section referred to as "the commencement date") may subject to the provisions of this Act continue to carry on the business of transmission on or after the commencement date so however that

(a) he shall not lay any pipeline in addition to those existing

immediately before the commencement date; and

(b) where the quantum of gas which he transmits on or after the commencement date by means of pipelines existing before the commencement date exceeds the quantum of gas transmitted by him on the day immediately before the commencement date

(i) the charges for transmitting the excess gas shall be regulated by the Authority, and

(ii) the transmission of the excess gas shall be based on the principles of common carrier.

(2) A licensee or a supplier or a bulk consumer may undertake transmission and lay and operate dedicated pipelines therefor subject to the previous approval of a specified company and such regulations which the Authority may make with regard to the standards of safety, operation and environment.

Explanation. For the purpose of this sub-section, the expression "dedicated pipeline" means a pipeline laid and operated by a licensee or by a supplier or by a bulk consumer for obtaining gas from pipelines operated for transmission by a specified company or a person referred to in sub-sec. (1).

56. Repeal and savings :-

(1) The Gujarat Gas (Regulation of Transmission, Supply and Distribution) Ordinance, 2000 (Guj. Ord. 7 of 2000) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.