

Decision No. 1139/16.10.2006
approving the Regulation on accounting, legal, functional and organisational unbundling of natural gas regulated activities

Taking into consideration:

the provisions of art. 8 let. p) point 8, together with art. 101 par.(1) of the Gas Law No. 351/2004 with subsequent amendments;

the provisions of the Accountancy Law No. 82/1991, republished, with subsequent amendments;

the provisions of Decision No. 1.078/2003 of the president of the National Natural Gas Regulatory Authority approving the criteria and methods for approval of natural gas prices and setting of regulated natural gas tariffs, with subsequent amendments;

the provisions of Order No. 1.752/2005 of the minister of public finances approving the accounting regulations compliant with the European directives;

the provisions of Government Decision No. 784/2000, republished, with subsequent amendment, approving the Regulation on the grant of natural gas licenses and authorisations;

On the basis of:

the provisions of art. 10 par. (4) and (5) of the Gas Law No. 351/2004 with subsequent amendments,

The President of the National Natural Gas Regulatory Authority issues the present decision.

Art. 1. - The Regulation on accounting, legal, functional and organisational unbundling of natural gas regulated activities is approved, as stipulated in the annex which is an inherent part of the present decision.

Art. 2. – The responsible departments of the National Natural Gas Regulatory Authority and the legal persons which are licensees in the natural gas sector will enforce the provisions of the present decision.

Art. 3. – As of 1 January 2007, the Decision No. 625/2005 of the president of the National Natural Gas Regulatory Authority concerning the procedures on natural gas licensee's drafting the financial report and the regulated book-keeping, published in Romania's Monitorul Oficial, Part I, No. 739 of 15 August 2005 is repealed.

Art. 4. – The present decision is published in Romania's Monitorul Oficial, Part I.

President of the National Natural Gas Regulatory Authority
Ștefan Cosmeanu

Bucharest, 16 October 2006
No. 1.139

REGULATION
on accounting, legal, functional and organisational unbundling
of natural gas regulated activities

Art. 1. - (1) Legal persons, licensees in the natural gas sector, performing regulated activities falling under the category mentioned in art. 100 par. (2) of the Gas Law No. 351/2004, with subsequent amendments, hereinafter referred to as the Gas Law, are compelled to accomplish the accounting and/or legal, functional and organisational unbundling for each of these activities.

(2) By way of implementing the provisions of art. 101 par. 1 and par. 3 of the Gas Law, as of 1 January 2007, the legal persons having the obligation of accounting unbundling of regulated activities, will keep separate accounting books on types of activities (regulated activities, non-regulated activities performed in the sector and activities performed outside the natural gas sector).

(3) Until the legal unbundling of activities is achieved, the legal persons falling under the provisions of art. 101 par. 2 of the Gas Law, are absolved of the obligation to draft separate accounting books on types of performed activities, provided the deadlines stipulated in art. 119 par. 2 of the same law are met.

(4) Separate accounting books are organised at the level of financial accounting, and they shall permit to get information on revenues, costs, tangible and intangible assets and inventory assets, related to the activities performed. There are no reporting obligations other than the ones required according to the annexes to the present regulation.

Art. 2. – (1) Accounting and/or legal, functional and organisational unbundling will be performed in such a manner as to not generate unjustified increases of the costs.

(2) The National Natural Gas Regulatory Authority (ANRGN) will take into consideration, when determining the regulated revenue related to the activities performed, the value of the costs identified and evidenced by the company, incurred by the performance of accounting and/or legal, functional and organisational unbundling.

Art. 3. – (1) The costs identified and evidenced by the company, incurred by the performance of accounting and/or legal, functional and organisational unbundling, related solely to the unbundling process, will be recognized when calculating regulated prices and tariffs, provided the company proves that the following conditions are met:

- a) they are generated by operations specific to the accounting and/or legal, functional and organisational unbundling;
- b) they are real, actual and related to the regulated activities.

(2) Acceptance of the costs of accounting and/or legal, functional and organisational unbundling of regulated activities into the structure of regulated

prices and tariffs will be done according to the principles and rules established for the organisation and management of regulated accounting books, provided by the Decision No. 1078/2003 of ANRGN president approving the criteria and methods for approval of natural gas prices and setting of regulated natural gas tariffs, with subsequent amendments.

Art. 4. - (1) The legal persons having the obligation to secure the legal, functional and organisational unbundling of regulated activities will submit to ANRGN, in 45 days from the publishing of the present decision in Romania's Monitorul Oficial, Part I, a report concerning :

a) the inventory of the operations performed within each of the regulated activities performed;

b) stages established with a view to fulfil the obligations on legal, functional and organisational unbundling of regulated activities;

c) allocation of tangible and intangible assets and inventory assets in use, needed for performing the regulated activities, among the legal entities resulted from the legal unbundling and actual structure thereof within each legal entity. In the case of the companies for which the RAB method was implicitly used when establishing the regulated revenue for the first regulatory period, the value of each component of tangible and intangible assets will be detailed, as per Decision No. 1078/2003 of ANRGN president, with subsequent amendments;

d) the organizational chart of each of the legal entities resulted from the legal, functional and organisational unbundling of natural gas regulated activities and the responsibilities of each organisational subsection;

e) identified means and measures proposed for adoption with a view to ensure efficient communication with existing or prospective customers, on issues concerning the specificity of the activities developed by the legal entities resulted from the legal unbundling, as well as to meet the requirements on confidentiality and avoidance of discrimination between customers;

f) contact details of the person appointed to monitor the implementation of the present regulation.

Art. 5. - The legal persons that do not have the obligation of legal, functional and organisational unbundling will submit to ANRGN, in 45 days from the publishing of the present decision in Romania's Monitorul Oficial, Part I, a report which will have to include the following documents and information:

a) the inventory of the operations developed within each of the regulated activities performed;

b) main stages to undergo with a view to enforce the provisions on accounting unbundling;

c) hypothesis, criteria and rules underlying the drafting of separate accounting books, which will permit to get information on costs, revenues, tangible and intangible assets and inventory assets, related to the regulated activities performed. In the case of the companies for which the RAB method was implicitly used when establishing the regulated revenue for the first

regulatory period, each element of the tangible and intangible assets will be detailed as per Decision No. 1078/2003 of ANRGN president with subsequent amendments;

d) the balance sheets used in the analysis carried out by the company in order to establish the hypothesis, criteria and rules underlying the drafting of separate accounting books on types of activities performed;

e) contact details of the person appointed to monitor the implementation of the present regulation.

Art. 6. – The reports drafted in compliance with art. 4 and 5 by the legal persons mentioned in art. 1, will be agreed by ANRGN in 60 days since their reception and will represent, as the case may be, the procedure on ensuring the legal, functional and organisational unbundling of the regulated activities and/or the procedure agreed for the drafting of separate accounting books on types of activities performed.

Art. 7. – (1) For an accurate implementation of the present regulation, ANRGN, after analyzing the reports received and the documents accompanying the reports, may request additional explanations on certain information submitted, and, as the case may be, the amendment of the reports requested.

(2) The explanations and documents requested as per par. (1) will be delivered in an efficient manner to the headquarters of ANRGN or, as the case may be, to the headquarters of the legal person concerned.

Art. 8. - (1) In case that, after agreeing the hypothesis, criteria and rules underlying the allocation of costs, revenues, tangible and intangible assets and inventory assets, related to the regulated activities performed, situations will occur demanding partial or total reconsideration and/or structure thereof, the companies concerned may submit requests to this purpose until 30 June each year, except for the last year of the regulated period, for which the deadline for submitting requests will be 31 March.

(2) ANRGN will analyse and solve de requests in 60 days from receiving them, in compliance with art. 7.

Art. 9. – In case that, during the performance of regulated activities, changes occur in the structure of the operations carried out, the legal person concerned is compelled to notify ANRGN, in an efficient manner, about the emerged situation. In case these changes influence the structure and/or value of the costs and revenues, ANRGN may request the amendment of the set of procedures agreed with each company.

Art. 10. - (1) After the present regulation becomes effective, the legal persons applying for licenses for performing regulated activities in the natural gas sector, are compelled to keep separate accounting books on types of activities performed according to the legal regulations and to submit to ANRGN the documents, data, and information specified in art. 5 let. a), c) and e).

(2) The data and information specified in par. (1) will be submitted prior to obtaining the licenses for performing regulated activities or at the same time with the request for price approval or regulated tariffs setting, as the case may.

Art. 11. - In case that, after the legal, functional and organisational unbundling of the regulated activities, a legal person is emerging, performing several regulated activities or regulated and non-regulated or not-natural gas related activities, this one is compelled to organise separate accounting books on types of activities, according to the present regulation.

Art. 12. – (1) Starting with the 2006 financial exercise, the companies performing regulated activities in the natural gas sector will submit to ANRGN reports on costs, revenues, tangible and intangible assets and inventory assets, related to the activities performed, according to the templates attached to the present regulation, as well as the company's financial reports, filed with the general directorates for public finances. These reports will be submitted until 1 July of each financial year next to the year for which the reporting is done. Prior to submission, the reports requested will be audited/checked in compliance with the legal provisions in force, verifying in particular the observance of the obligation concerning avoidance of cross subsidies between the activities performed.

(2) The reports on costs, revenues, tangible and intangible assets, related to the regulated activities performed will represent regulated accounting books – ECR, within the meaning specified in art. 66 of Decision No. 1.078/2003 of ANRGN president approving the criteria and methods for approval of natural gas prices and setting of regulated natural gas tariffs, with subsequent amendments.

(3) The legal persons carrying out the legal, functional and organisational unbundling of the regulated activities, will submit to ANRGN the reports drafted for a period spanning from 1 January of the financial year during which the unbundling happens to the date of the actual legal unbundling. The reports will observe the templates included in annexes 1- 4 to the present regulation. The reports will be submitted in 60 days from the date of the actual legal unbundling.

(4) The legal persons performing solely non-regulated licensed activities in the natural gas sector and/or other non-licensed activities in the sector or outside the sector, are compelled to keep separate accounting books between licensed and non-licensed activities, according to art. 20 let. k) of Government Decision No. 784/2000, republished, with subsequent amendments, approving the Regulation on the grant of natural gas licenses and authorisations. The financial reports requested as per art. 20 let. k) of Government Decision No. 784/2000, republished, will be drafted according to the templates presented in annexes 5 and 6 of the present regulation and will be submitted to ANRGN at the latest by 1 July of the financial year next to the year for which the reporting is done.

Art. 13. – The reports mentioned in the annexes to the present regulation will be submitted both on paper, and via e-mail, to anrgn@anrgn.ro, in Microsoft Excel format.

Art. 14. – (1) The non-observance of the obligations set in the present regulation is a minor offence and is penalised according to the legal provisions in force.

(2) Acknowledgement of minor offences and application of penalties are undergone by persons empowered to this purpose by the president of ANRGN.

Art. 15. - Annexes 1- 6 are an inherent part of the present regulation and are published in electronic format, on ANRGN web page (www.anrgn.ro), within the section about “ANRGN Regulations” , “Reports” subsection.