

**FOURTEENTH CONGRESS OF THE REPUBLIC )**  
**OF THE PHILIPPINES )**  
**First Regular Session )**

) 7 JUL -3 AM 11:21  
)

**SENATE**

RECEIVED BY: 

**S. B. No. 733**

---

**Introduced by Senator Ramon Bong Revilla, Jr.**

---

**EXPLANATORY NOTE**

The discovery of natural gas in the country has raised hopes about a brighter future for all of us. As an alternative to crude oil, natural gas may hold the key to the current energy crisis and our over dependence on petroleum products.

However, this can only happen if we allow the natural gas industry to flourish and be fully developed. It is therefore imperative that we create conditions favorable to the establishment of a downstream Natural Gas Industry that will, among others, accelerate the expansion of natural gas service for the benefit of the populace. Likewise, it is also important that we lay down a regulatory framework that will ensure the quality, regularity, security and reasonableness of charges for the transmission, distribution and supply of natural gas.

It is about time that we develop the downstream natural gas industry and transform it from an emerging industry to one that is mature and competitive. This, ultimately, will redound to the benefit of the country and will help ensure that power will always be available.

For these reasons, I urge the immediate passage of the bill.

  
**RAMON BONG REVILLA, JR.**

FOURTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
First Regular Session )

7 JUL -3 AM 11:31

SENATE

RECEIVED BY: \_\_\_\_\_

S. B. No. 733

---

Introduced by Senator Ramon Bong Revilla, Jr.

---

AN ACT  
ORDAINING THE DEVELOPMENT OF THE DOWNSTREAM NATURAL GAS  
INDUSTRY AND CONSOLIDATING FOR THAT PURPOSE ALL LAWS  
RELATING TO THE TRANSMISSION, DISTRIBUTION AND SUPPLY OF  
NATURAL GAS AND FOR OTHER PURPOSES

*Be it enacted by the Senate and the House of Representatives of the  
Philippines in Congress assembled:*

CHAPTER I  
TITLE AND DECLARATION OF POLICY

**SEC. 1. Short Title.** - This Act shall be known as the "Downstream Natural Gas Industry Act of 2007". It shall hereinafter be referred to as the Act.

**SEC. 2. Declaration of Policy.** - It is hereby declared the policy of the State:

- (a) To promote the role of Natural Gas as an environment- friendly and economically efficient source of energy by creating favorable conditions for establishing a Downstream Natural Gas Industry that will accelerate the expansion of Natural Gas service for the benefit of all segments of the nation's population and all sectors of its economy;
- (b) To ensure the safety, quality, reliability, security and affordability of the Transmission, Distribution and Supply of Natural Gas;
- (c) To ensure transparent and reasonable rates and prices of Natural Gas Transmission, Distribution and Supply in a regime of free and fair competition and full public accountability that will promote greater operational and economic efficiency and the enhanced competitiveness of Philippine products in the global market;
- (d) To encourage the inflow of private capital in providing the infrastructure and services necessary to develop new gas supplies and increase the utilization of Natural Gas;
- (e) To ensure fair and non-discriminatory treatment of public and private sector entities in the development of the Downstream Natural Gas Industry;
- (f) To protect the public interest as it is affected by the quality of, and the rates charged for, the Transmission, Distribution and Supply of Natural Gas and related services;

- (g) To assure the development of a Downstream Natural Gas Industry infrastructure that is socially acceptable and compliant with existing environmental laws;
- (h) To ensure that the Downstream Natural Gas Industry shall be regulated in a manner that will ensure the quality, reliability, security and reasonableness of charges for the Transmission, Distribution and Supply of Natural Gas, encourage private investment in the Downstream Natural Gas Industry and promote the efficient and competitive operation thereof ;
- (i) To develop the necessary trades, technical expertise and skills to support the development of the Downstream Natural Gas Industry;
- (j) To facilitate the development of end-uses of Natural Gas that promotes fuel diversity and compliance with existing environmental laws including, but not limited to, the use of Natural Gas as a vehicular fuel; and
- (k) To encourage equity participation in Gas Transmission Utilities and Gas Distribution Utilities by the general public.

**SEC. 3. Scope.** - This Act shall provide a framework for the development of a Downstream Natural Gas Industry and its transition from an emerging to a mature industry status and competitive Natural Gas market, and define the responsibilities of various government agencies and private entities in furtherance of this national goal.

All activities of the DOE and the ERC relevant to the development and regulation of the Downstream Natural Gas Industry shall be in accordance with this Act.

**SEC. 4. Definition of Terms.** - As used in this Act, the following terms shall have the following meanings:

- (a) **“Captive Market”** refers to Natural Gas End-users who do not have the choice of a transporter or distributor, or Supplier of Natural Gas or other economically competitive energy substitute, as may be determined by the ERC in accordance with this Act;
- (b) **“Congress”** refers to the Congress of the Philippines;
- (c) **“Contestable Market”** is a market which is not a Captive Market;
- (d) **“Delivery”** refers to the Transportation Transmission or Distribution of Natural Gas and the Supply of Natural Gas, at wholesale or retail;
- (e) **“Department of Energy”** or **“DO”** refers to the government agency created pursuant to Republic Act No. 7638, as amended;
- (f) **“Department of Environment and Natural Resources”** or **“DENR”** refers to the government agency created pursuant to Executive Orders Nos. 192 and 292, as amended;
- (g) **“Distribution”** refers to the conveyance of Natural Gas by a Gas Distribution Utility through its Gas Distribution System;
- (h) **“Downstream Natural Gas Industry”** refers to the Transmission, Distribution and Supply of Natural Gas and related activities, such as but not limited to processing, storing, re-gassification, interconnection, measurement and/or metering;
- (i) **“End-user”** refers to any person that receives delivery of Natural Gas for its own use;

(j) “**Energy Regulatory Commission**” or “**ERC**” refers to the regulatory agency created pursuant to Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 whose expanded functions are provided in this Act;

(k) “**Franchise**” refers to the right, privilege and authority issued by Congress authorizing a person to engage in the Transmission and/or Distribution of Natural Gas within a specific geographical area;

(l) “**Franchise Area**” refers to a geographical area assigned or granted under a Franchise;

(m) “**Gas Distribution Code**” refers to the code to be formulated by the DOE as required by the Act that sets the technical performance standards for operating Gas Distribution Utilities and the minimum financial standards for Gas Distribution Utilities;

(n) “**Gas Distribution System**” refers to the system of pipelines, storage related facilities extending from the delivery points where the Gas Distribution System receives the Natural Gas to the point of connection to the premises of the End-User;

(o) “**Gas Distribution Utility**” refers to any Person that has a Franchise granted by Congress to operate a Gas Distribution System;

(p) “**Gas Permit**” refers to an authorization issued by the DOE for the construction, operation, expansion and modification of Gas Transmission Systems and Gas Distribution Systems and for the Supply of Natural Gas.

(q) “**Gas Supply Contract**” refers to a contract for the Supply of Natural Gas between a Supplier and a purchaser;

(r) “**Gas Transmission Code**” refers to the code to be developed by the DOE as required by the Act that sets the technical performance standards for operating Gas Transmission Systems and the minimum financial standards for Gas Transmission Utilities;

(s) “**Gas Transmission System**” refers generally to the system of pipelines, storage and related facilities that are used to transport Natural Gas from the interconnection with Gathering Facilities, LNG regassification facilities or other Gas Transmission Systems to the interconnections with Gas Distribution Systems, other Gas Transmission Systems, or End-users;

(t) “**Gas Transmission Utility**” refers to any Person that has a Franchise to operate a Gas Transmission System and does not include those who operate own-use pipelines, storage and related facilities operated independently of the pipeline or those intending to operate a Gas Transmission System;

(u) “**Gathering Facilities**” refers to Natural Gas pipelines and related facilities used to gather gas in the field and bring it to a location for processing or for delivery at an interconnection with the Gas Transmission System; the terms “Gather” and “Gathering” shall be construed accordingly;

(v) “**Joule**” refers to the unit of energy or work done when the point of application of a force of one Newton is displaced a distance of one meter in the direction of the force. It is also equal to one watt-second;

(w) “**LNG**” refers to Liquefied Natural Gas”;

(x) **“Natural Gas”** refers to hydrocarbons, primarily methane, which, at atmospheric temperature and pressure, are in a gaseous phase. For purposes of this Act, the term “Natural Gas” shall be inclusive of LNG;

(y) **“Person”** refers to a natural or judicial person, as the case may be including the national and local government of the Republic of the Philippines, its agencies and instrumentalities and government-owned and controlled corporations;

(z) **“Petroleum Operations”** as defined in PD 87, refers to searching for and obtaining petroleum within the Philippines through drilling and pressure or suction or the like, and all other operations incidental thereto. It includes the transportation, storage, handling and sale (whether for export or for domestic consumption) of petroleum so obtained but does not include any: (1) transportation of petroleum outside the Philippines; (2) processing or refining at a refinery; or (3) any transactions in the products so refined;

(aa) **“Philippine Energy Plan”** or **“PEP”** refers to the overall energy program formulated and updated yearly by the DOE and submitted to Congress pursuant to Republic Act No. 7638, as amended;

(bb) **“Service Contract”** refers to the award granted by the Philippine government to a qualified Person to engage in the exploration, development and utilization of natural resources through joint venture, co-production, production-sharing or other similar arrangement with the State pursuant to Article XII, Section 2, of the Constitution, including, Service Contracts under Presidential Decree No. 87, as amended;

(cc) **“Supplier”** refers to any Person authorized by the DOE to engage in the Supply of Natural Gas;

(dd) **“Supply”** refers to the domestic trading and/or sale of Natural Gas for wholesale or retail;

(ee) **“Third Party Access”** refers to the system of allowing any qualified Person access to the Gas Transmission Systems and Gas Distribution Systems under the conditions prescribed in Chapter II Sec. 10 hereof;

(ff) **“Transmission”** refers to the transportation of Natural Gas through Gas Transmission System;

(gg) **“Unbundled Service”** refers to the pricing of the energy value of Natural Gas separately from the rates charged for natural gas Transmission or Distribution; and

(hh) **“Vehicular Natural Gas”** means Natural Gas that is used as a fuel in a self-propelled vehicle.

## **CHAPTER II**

### **ORGANIZATION AND OPERATION OF THE DOWNSTREAM NATURAL GAS INDUSTRY**

**SEC. 5. Organization.** - For purposes of this Act, the Downstream Natural Gas Industry shall be divided into three (3) sectors, namely: Transmission, Distribution and Supply of Natural Gas.

**SEC. 6. Regulation of Transmission, Distribution and Supply Sectors.** - The Transmission, Distribution and Supply of Natural Gas are businesses affected with public interest and the regulation of these businesses as provided for in this Act is hereby deemed necessary in the public interest.

**SEC. 7. Franchise Requirement. -**

**(a) Transmission and Distribution of Natural Gas declared public utilities.** The Transmission and Distribution of Natural Gas as provided for in this Act are hereby declared to be public utility operations, requiring a Franchise or similar legislative authorization;

**(b) Congressional Franchise and similar legislative authorization.** Any person that seeks to operate for commercial purposes a Gas Transmission System or Gas Distribution System shall first be required to hold or obtain a Franchise, any law to the contrary notwithstanding. The Franchise requirement shall apply with respect to all Gas Transmission Systems and Gas Distribution Systems, regardless of the size or pressure of the pipeline. The foregoing, notwithstanding, this Franchise requirement does not apply to operators of facilities for the Transmission and Distribution of Natural Gas for Own-use and related facilities that are operated independently from the pipeline;

**(c) Prior regulatory approvals.** The grantee of such Franchise shall also be required to secure from the DOE a Gas Permit as provided herein, and to secure from the appropriate government agencies all other regulatory approvals, licenses, permits and authorizations applicable to such grantee under existing laws. The DOE shall not unreasonably withhold or delay the grant of any Gas Permit, and may not reopen any legislative determination in the review and grant of any Franchise.

**SEC. 8. Philippine Ownership Requirement. -** As Article XII, Section 11, of the Constitution of the Republic of the Philippines, no Franchise, certificate, or any other form of authorization of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* (60%) of whose capital is owned by such citizens.

**SEC. 9. Gas Transmission Systems of Service Contract Holders. -** Any Person who is a holder of a Service Contract that authorizes the construction and operation of facilities for the Transmission or Distribution of Natural Gas shall not be required to obtain a Franchise or other legislative authorizations under this Act only to the extent such facilities are:

(a) located in the production area and upstream of gas processing or refining facilities and are not used to serve End-users; or

(b) used exclusively to provide service to existing customers or such Person under a Gas Supply Contract entered into prior to the effectivity of this Act, which Gas Supply Contract shall not be affected by the enactment of this Act. In all other cases, Service Contract holders shall be subject to the Franchise and other regulatory approval requirements set forth in this Act.

**SEC. 10. Third Party Access. -** Gas Transmission Systems and Gas Distribution Systems excluding those constructed and operated for own use shall be available for non-discriminatory access by third party users which may include parties to a Service Contract, Suppliers and End-users, with due regard to the economic viability of the operation of such facilities. Such operators shall negotiate in good faith with third-party users the provision and terms of access in accordance with guidelines to be promulgated by the DOE.

a) **Available Capacity.** Third Party Access obligations shall apply only to the available capacity of the Gas Transmission Systems and Gas Distribution Systems as determined by subtracting the volume of capacity that is:

(i) Used by the owner or operator to serve his own customer;  
and/or

(ii) Allocated by the owner or operator to third parties under transportation contracts from the design capacity of the Gas Transmission Systems and Gas Distribution Systems.

Non-discriminatory third-party access shall be available to users by contract with the Gas Transmission or Gas Distribution Utility. If the Gas Transmission or Gas Distribution Utility with available capacity refuses service to a user or offers discriminatory service, the affected party may request the DOE'S intervention. The Gas Transmission or Distribution Utility shall be required to file proof that capacity was not available when service was denied.

b) ***Deferment of Third Party Access Obligation.*** As a condition imposed by a Permit, the DOE may determine that implementation of Third Party Access to Gas Transmission Systems and Gas Distribution Systems may be deferred where:

(i) It can be demonstrated that such deferment is necessary to enable the efficient planning of the infrastructure and aggregation of the initial demand necessary to justify investments in the Gas Transmission Systems and Gas Distribution Systems; or

(ii) It is in the interest of the End-users served by the Gas Transmission System and Gas Distribution System to ensure stability of supply.

In either case, the DOE shall not defer implementation of Third Party Access for a period longer than three (3) years after completion of construction in the case of Gas Transmission Systems and five (5) years after completion or construction in the case of Gas Distribution Systems. Provided, however, that the deferment period can be extended on reasonable grounds.

(c) ***Approved Access Conditions for Gas Transmission Utilities and Gas Distribution Utilities.*** Prior to conducting negotiations with third parties, a Gas Transmission Utility and a Gas Distribution Utility shall request the DOE to approve its access conditions. The DOE shall approve access conditions after it has determined that they are consistent with the guidelines which it shall promulgate pursuant to this Act.

**SEC. 11. *Environmental Protection.*** - Gas Transmission Utilities, Gas Distribution Utilities and Suppliers shall comply with all environmental laws, rules, regulations and standards promulgated by the DENR and other appropriate governmental agencies.

### **CHAPTER III POWERS AND FUNCTIONS OF THE DOE**

**SEC. 12. *Powers and Functions of the DOE.*** In addition to its existing powers and functions, the DOE shall have the overall responsibility of supervising and monitoring the development of the Natural Gas Industry and regulation of the construction and operation of Natural Gas pipelines and related facilities for the Transmission, Distribution and Supply of Natural Gas. Towards this end, the DOE shall have the following powers and functions:

- (a) Issue permits for the construction of pipelines and related facilities for the Transmission, Distribution and Supply of Natural Gas;
- (b) Establish standards setting forth the characteristics for classifying pipeline and related facilities either as Gas Transmission Systems, Gas Distribution Systems, or Gathering Facilities. These standards may include both the physical characteristics related to the diameter, size and pressure of pipeline facilities, and the functional characteristics of such facilities;

- (c) Prepare and periodically update a five-year Natural Gas Development Plan and integrate the same into the PEP. The DOE shall consider and integrate the individual or joint development plans prepared and submitted to it by the Downstream Natural Gas industry participants pursuant to this Act. Appropriate mechanisms shall be provided to protect the confidentiality of any information that is commercially sensitive. The DOE shall publish an initial draft of the plan and undertake public consultations thereon prior to its adoption;
- (d) Before the end of April of each year, submit to the Office of the President and Congress an annual report;
- (e) Ensure the safety, reliability, quality and security of supply of Natural Gas consistent with the development of the Downstream Natural Gas Industry, the DOE shall, among others;
  - (i) Encourage private sector investments in delivery infrastructure and promote the development of domestic markets for Natural Gas;
  - (ii) In consultation with the Downstream Natural Gas Industry participants and other government agencies, promote a system of incentives to encourage industry participants, including new producers and End-users to provide adequate and reliable supply of Natural Gas; and
  - (iii) Undertake, in coordination with other governmental agencies, as appropriate, an information campaign to educate the public on the benefits of developing the Natural Gas Industry and the potential for utilizing Natural Gas as a source of energy.
- (f) Within one (1) year from the effectivity of this Act, promulgate rules and regulations to promote competition, encourage market development and customer choice and prohibit/penalize abuse of market power, cartelization and any anti-competitive or discriminatory behavior, in order to further the intent of this Act and protect the public interest. Such rules and regulations shall:
  - (i) define the relevant product and geographic markets for purposes of establishing anti-competitive conduct;
  - (ii) provide criteria to determine the relevant market structure; and
  - (iii) establish the periodic reportorial requirements of Natural Gas Industry participants as may be necessary to enforce the provisions of this Section.
- (g) Within six (6) months from the effectivity of this Act, the DOE shall, preparatory to the holding of public consultations with Natural Gas industry participants, issue draft Gas Transmission and Distribution Codes which shall contain, among others, the following:
  - (i) Technical performance standards for Gas Transmission and Distribution Utilities; provided, that in the establishment of the performance standards, the nature and function of the entities shall be considered; and
  - (ii) Minimum financial capability standards for Gas Transmission and Distribution Utilities: *provided*, that such standards are set to ensure that the Natural Gas Industry participants meet the minimum financial standards to protect the public interest.



In consultation with Natural Gas industry participants, the DOE shall issue final Gas Transmission and Distribution Codes within twelve (12) months from the effectivity of this Act.

- (h) By order, revoke, after due notice and hearing, the Gas Permit of any Person that fails to comply with the rules and regulations promulgated pursuant to this Act, the Gas Transmission Code, the Gas Distribution Code, or any requirement of this Act. The DOE shall allow such Person sufficient time to remedy the violation for an orderly disgorgement, when applicable, but in no case shall such remediation period exceed twelve (12) months from the date of issuance of the order.
- (i) Encourage private enterprises in the Downstream Natural Gas Industry to broaden the base of their ownership and thereby encourage the widest public ownership thereof;
- (j) Formulate, in consultation with the Downstream Natural Gas Industry Participants, rules and regulations as may be necessary to implement the objectives of this Act;
- (k) Exercise such other powers as may be necessary or incidental to attain the objectives of this Act; and
- (l) Exercise original and exclusive jurisdiction over all cases dealing with issuance of Permits, non-price regulatory measures, fees, fines and penalties imposed by the DOE in the exercise of the above-mentioned powers.

#### **CHAPTER IV POWERS AND FUNCTIONS OF THE ERC**

**SEC. 13. Powers and Functions of the ERC.** - In addition to its existing powers and functions, ERC shall assume sole regulatory responsibility for establishing the rates and related terms and conditions of service for the Transmission, Distribution, and Supply of Natural Gas to the extent that each such activity is regulated pursuant to the requirements set forth in this Act. Towards this end, the ERC shall have the following powers and functions;

- (a) In the public interest, establish and enforce a methodology for setting Transmission, Distribution, and Supply rates taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of the just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms or internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price or tariff. The rates prescribed shall be non-discriminatory. The ERC shall determine such form of rate-setting methodology which shall promote efficiency.
- (b) Determine whether take-or-pay charges, minimum bill payments or similar fixed obligations contained in Gas Sales and Purchase Contracts or pipeline Transmission contracts entered into by Gas Transmission and Distribution Utilities and electric power industry participants can be recovered from their tariffs to their own customers;
- (c) Apply administrative procedures that will ensure the Constitutional right to due process.

## CHAPTER V NATURAL GAS TRANSMISSION SECTOR

**SEC. 14. *Gas Permit Requirement*** - Any Person that holds a Franchise granted by Congress authorizing it to serve as a Gas Transmission Utility shall, before it operates, maintains or constructs Gas Transmission Systems, secure from the DOE a Gas Permit issued pursuant to the standards set forth in this Act and the rules and regulations promulgated by the DOE. The DOE shall issue a public notice of all Gas Permit applications and afford interested parties reasonable opportunity to comment upon such applications. The DOE shall issue a Gas Permit upon its determination that the construction, control, installation, operation and maintenance of the Gas Transmission System would be consistent with the policy declarations contained in this Act. Provided, however, that if a Gas Permit is sought for new service that would be provided within the Franchise area of Gas Transmission Utility, the DOE shall consider the economic effects of granting such a Gas Permit upon that Gas Transmission Utility and its End-users.

**SEC. 15. *Terms and Conditions of Permits***. - In issuing a Gas Permit, the DOE shall have the power to impose such reasonable terms and 24 conditions as the public interest may require. Among such conditions shall be the requirement that the Permit holder complies in full with the Gas Transmission Code promulgated by the DOE pursuant to Section 17 hereof. Gas Transmission Utilities shall not be obligated to undertake, nor may DOE require, the expansion of an existing Gas Transmission System to serve additional customers or the sizing of a Gas Transmission System for the purpose of increasing capacity to serve load in excess of the maximum design capacity of the pipeline proposed by the Gas Transmission Utility;

**SEC. 16. *Functions/Obligations of Gas Transmission Utilities***. - A Gas Transmission Utility shall have the obligation to provide Transmission services and connections to its Gas Transmission System for any End-user subject to economic viability. Any Gas Transmission Utility engaged therein shall provide non-discriminatory access to its Gas Transmission System to any Supplier and eligible End-users under Section 10, Chapter II of this Act.

**SEC. 17. *Gas Transmission Code Compliance***. - All Gas Transmission Utilities shall be required to ensure and maintain the safety, reliability, adequacy, security, stability and integrity of their Gas Transmission Systems in accordance with the performance standards set forth in Gas Transmission Code to be promulgated by the DOE. Each Gas Transmission Utility shall submit to the DOE a statement of its compliance with the technical specifications prescribed in the Gas Transmission Code and the performance standards prescribed in the rules and regulations implementing this Act. A Gas Transmission Utility that does not comply with a prescribed technical specification or performance standard shall 1 include within such statement of compliance a plan for achieving 2 compliance with said technical specifications and performance standards 3 within three (3) years or such lesser period as may be necessary to prevent safety, reliability, or environmental harm. The DOE shall, within sixty (60) days upon receipt of such plan, evaluate the same and notify the Gas Transmission Utility concerned whether its plan is accepted. Failure to submit a feasible and credible plan and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

**SEC. 18. *Abandonment of Gas Transmission Systems***. - No holder of a Permit for the construction, installation, operation or maintenance of a Gas Transmission System shall abandon or withdraw from service any portion of such Gas Transmission System without obtaining prior authorization from the DOE, which determination shall be made within one hundred eighty (180) days from the filing of the application for abandonment. Such abandonment shall be done in accordance with existing laws.

**SEC. 19. *Fees***. - The DOE shall have the authority to prescribe and collect fees and charges relating to the issuance and/or review of Permits, and other services related to the supervision and regulation of Gas Transmission Systems.

## CHAPTER VI NATURAL GAS DISTRIBUTION SECTOR

**SEC. 20. *Gas Permit Requirement*** - Any Person that holds a Franchise granted by Congress authorizing, it to serve as a Gas Distribution Utility shall, before it operates, maintains or constructs Distribution Systems, secure from the DOE a Gas Permit issued pursuant to the standards set forth in this Act and the rules and regulations promulgated by the DOE. The DOE shall issue a public notice of all Gas Permit applications and afford interested parties reasonable opportunity to comment upon such applications. The DOE shall issue a Gas Permit upon its determination that the construction, control, installation, operation and maintenance of the Gas Distribution System would be consistent with the policy declarations contained in this Act. Provided, however, that if a Gas Permit is sought for new service that would be provided within the Franchise area of Gas Distribution Utility, the DOE shall consider the economic effects of granting such a Gas Permit upon that Gas Distribution Utility and its End-users.

**SEC. 21. *Terms and Conditions of Permits.*** - In issuing a Permit, the DOE shall have the power to impose such reasonable terms and conditions as the public interest may require. Among such conditions shall be the requirement that the Permit holder complies in full with the Gas Distribution Code promulgated by the DOE pursuant to Section 23 hereof,

### **SEC. 22. *Functions of Gas Distribution Utilities.*** -

(a) A Gas Distribution Utility shall have the obligation to provide Distribution services and connections to its Gas Distribution System for any End-user within the area covered by its Gas Permit consistent with the Gas Distribution Code. Any Gas Distribution Utility engaged therein shall provide non-discriminatory access to its Gas Distribution System to eligible End-users under Section 10, Chapter II of this Act;

(b) Any Gas Distribution Utility shall be entitled to impose and collect Distribution charges and connection fees from such End-users as approved by the ERC;

(c) A Gas Distribution Utility shall submit to the DOE annually its plan for maintaining and developing its Gas Distribution System in compliance with the obligations imposed by this Act;

(d) A Gas Distribution Utility shall provide universal service within the area covered by its Gas Permit except as provided herein. A Gas Distribution Utility shall be obliged to develop and maintain an efficient system for the Supply of Natural Gas at the reasonable request of End-users within its Franchise Area including:

(i) The installation of pipes where the connection to the End-user is within twenty (20) meters of the Gas Distribution System; or Increasing the capacity of existing Gas Distribution Systems; provided, however, that no new service shall be required if such service would not be economically viable. A determination by a Gas Distribution Utility that it cannot viably serve a portion of Nits Franchise Area shall be subject to review by the DOE upon filing of a complaint by the requesting End-user.

The obligation of the Gas Distribution Utility to provide universal access involves both an obligation to connect End-users within twenty-five (25) meters from the main pipeline and an obligation to supply such End-users, to the extent that the Gas Distribution Utility is the sole gas Supplier. Upon implementation of Third Party Access, the utility shall be relieved of his obligation to supply End-users eligible for retail access as defined in the guidelines to be promulgated by the DOE, but not his obligation to provide connection to his distribution system to such End-users. Whether or not the Gas Distribution Utility is the sole gas supplier in the area, prices charged by the utility for the supply of gas will be negotiated for Contestable Market and regulated by the ERC for the Captive Market.

(e) A Gas Distribution Utility shall submit annually to the DOE its plan for maintaining and developing its Gas Distribution System in compliance with the obligations prescribed in this Act.

**SEC. 23. *Gas Distribution Code Compliance.*** All Gas Distribution Utilities shall be required to ensure and maintain the safety, reliability, adequacy, security, stability and integrity of their Gas Distribution Systems in accordance with the performance standards set forth in Gas Distribution Code to be promulgated by the DOE. Each Gas Distribution Utility shall submit to the DOE a statement of its compliance with the technical specifications prescribed in the Gas Distribution Code and the performance standards prescribed in the rules and regulations implementing this Act. A Gas Distribution Utility that does not comply with a prescribed technical specification or performance standard shall include within such statement of compliance a plan for achieving compliance with said technical specifications and performance standards' within three (3) years or such lesser period as may be necessary to prevent safety, reliability, or environmental harm. The DOE shall, within sixty (60) days upon receipt of such plan, evaluate the same and notify the Gas Distribution Utility concerned whether its plan is accepted. Failure to submit a feasible and credible plan and/or failure to implement the same shall serve as grounds for the imposition of appropriate sanctions, fines or penalties.

**SEC. 24. *Abandonment of Gas Distribution Systems.*** - No holder of a Permit for the construction, installation, operation or maintenance of a Gas System shall abandon or withdraw from service any portion of such Gas Distribution System without obtaining prior authorization from the DOE, which determination shall be made within one hundred eighty (180) days from the filing of the application for abandonment. Such abandonment shall be done in accordance with existing laws.

**SEC. 25. *Fees.*** - The DOE shall have the authority to prescribe and collect fees and charges relating to the issuance and/or review of Permits, and other services related to the supervision and regulation of Gas Distribution Systems.

## **CHAPTER VII SUPPLY SECTOR**

**SEC. 26. *Gas Permit Requirement.*** - Any law to the contrary notwithstanding, no Person may engage in any Supply activity unless it has obtained a Permit, as appropriate, from the DOE. For this purpose, the DOE shall promulgate rules and regulations prescribing the qualifications of Suppliers which shall include, among other requirements, a demonstration of their technical capability, financial capability, and creditworthiness. The DOE shall have authority to require Suppliers to furnish a bond or other evidence of the ability of a Supplier to withstand market disturbances or other events that may increase the cost of providing service.

**SEC. 27. *Condition for Suppliers' Access to Customers of Gas Distribution Systems.*** - Upon the implementation of Third Party Access as stipulated in the Gas Permit for a particular Gas Distribution System, large end-users in the geographic area served by that Gas Distribution System which meet the criteria set forth in the guidelines promulgated by the DOE pursuant to this Act may enter into Gas Supply Contracts with any Supplier. The DOE shall determine End-users or classes of End-users that are eligible for direct access by Suppliers, giving consideration to relevant factors including whether such End-users or class of End-users constitute a Contestable Market and the financial consequences of any assets potentially stranded by expanding Supply competition.

## **CHAPTER VIII OWN-USE FACILITIES**

**SEC. 28. *Own-Use Permits.*** Permits for the Transmission and/or Distribution of Natural Gas for own-use shall be granted for a specific capacity and defined route, and only final users may be the holders of such permits. In issuing a Permit, the DOE shall

have the power to attach such reasonable terms and conditions to the Permit as the public interest may require. Among such conditions shall be the requirement that the Permit holder comply in full with the Gas Transmission or Distribution Code promulgated by the DOE, as such may be amended from time to time, and to ongoing regulation by the DOE as provided herein.

## **CHAPTER IX RATES AND CHARGES**

**SEC. 29. *Regulation of Rates and Charges.*** The ERC shall review and approve the rates, charges and other amounts proposed to be charged by Gas Transmission and Distribution Utilities and Suppliers. Where such rates are applicable to products and services provided to Captive Markets, the ratemaking methodology to be applied by the ERC shall be based on the principle of full recovery of prudent and reasonable costs incurred, including a reasonable return on rate base that is equal to the rate of return on investments of comparable risk, or such other principles that will promote the determination of just and reasonable rates. Rates and charges for products and/or services in Contestable Markets shall be deregulated. Rates and charges shall be calculated on the basis of Unbundled Service.

**SEC. 30. *Prohibition of Discriminatory and Unreasonable Rates and Charges.*** - No Gas Transmission Utility, Gas Distribution Utility or Supplier shall, with respect to the Transmission, Distribution, or Supply of Natural Gas (1) make or grant any undue preference or advantage or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, between locations , or between classes of service; or types of customers.

**SEC. 31. *Prohibition of Cross Subsidies.*** Gas Transmission and Distribution Utilities shall not, directly or indirectly, subsidize the provision of service with rates for other service or for the marketing of gas, or subsidize the marketing of gas with rates for other service.

**SEC. 32. *Separate Accounting Systems.*** For purposes of the preceding section, Gas Transmission and Distribution Utilities must separate, if applicable the financial information relevant to the provision of Transmission, storage and Distribution services, as well as the marketing of gas, in such a way as to clearly identify income, costs and operational expenses of each item.

**SEC. 33. *Take-or-Pay Obligations.*** For the purpose of determining their eligibility for a passthrough to End-users, take-or-pay provisions in Gas Sales and Purchase Contract shall

(i) Index the contract price to the price of competing alternative fuels such as heavy fuel oil and/or gas oil based on internationally accepted reference standards;

(ii) Include re-opener mechanisms to allow for the adjustment of the price and/ or volume commitments under extraordinary circumstances causing severe economic hardship to either party such as price movements in competing alternative fuel market or changes in the gas purchaser's market such as contraction in forecast demand levels;

(iii) Provide for a reasonable period for recovery of take-or-pay payments.

Potential parties to a Gas Sales and Purchase Contract may, at their option, and prior to the execution of such contract, request that the DOE review their take-or-pay provisions for their consistency with a(i) and a(ii) above;

No party to a Gas Sales and Purchase Contract may be compelled to renegotiate any term or condition of a duly executed Gas Sales and Purchase Contract or to incorporate terms or conditions in such contract which are not commercially acceptable to it or its counterparty, it being sufficient that the terms and conditions of the contract as a whole mitigate the potential impact upon End-users of take-or-pay provisions.

## CHAPTER X RATEMAKING PROCEDURES OF THE ERC

**SEC. 34. *Filing of Rate Schedules.*** - Under such rules and regulations as the ERC may prescribe, the ERC may require reports or documents from Gas Transmission Utilities, Gas Distribution Utilities or Suppliers showing all rates and charges for the Transmission, Distribution, or Supply of Natural Gas and the classifications, practice, and regulations affecting such rates, charges, and classifications and services, provided that the ERC shall, in the implementing rules and regulations of this Act, provide appropriate mechanisms to protect the confidentiality of any information that is commercially or competitively sensitive;

**SEC. 35. *Changes in Rate and Charges.*** - Within thirty (30) days of filing for a change in rates, the ERC shall issue an order accepting, rejecting, or setting for hearing such change. The ERC may, upon the filing of an application therefore or at any stage thereafter with or without prior hearing, on the basis of supporting papers duly verified or authenticated, and with such notice to the affected parties and opportunity for such parties to make such submissions as the ERC determines to be appropriate in the circumstances, grant provisional relief fixing interim rates for the Transmission, Distribution or Supply of Natural Gas applicable during the pendency of the hearing on the application, on motion of a party in the case or on its own initiative, without prejudice to a final decision after hearing, should the ERC find that the pleadings, together with such affidavits, documents and other evidences which may be submitted in support of the motion, substantially support the provisional order. The final order fixing the applicable rates shall provide for over- or under-recovery of costs occasioned by the application of ERC-approved interim rates. At any hearing involving rates adjustment, the burden of proof to show that the increased rates are just and reasonable shall be upon the Gas Transmission Utility, Gas Distribution Utility or Supplier.

## CHAPTER XI PROMOTION OF COMPETITION

**SEC. 36. *Market Power Abuse and Anti-Competitive Behavior.*** -

[a] No Gas Transmission Utility, Gas Distribution Utility or Supplier, or affiliate thereof may abuse its market power. Such abuse may include, but shall not be limited to, agreeing with competitors to fix prices, fix output of products or services, or divide markets or customers; tying arrangements; unduly discriminatory or preferential practices; or misrepresentation or false advertising;

[b] The DOE shall monitor and, after due notice and hearing upon complaint or on its own initiative, penalize any such market power abuse or anti-competitive or discriminatory act or behavior. Upon finding that a natural gas industry participant has engaged in such act or behavior, the DOE shall stop and redress the same. Such remedies shall, without limitation, include the imposition of price controls, issuance of injunctions, or disgorgement of excess profits and imposition of administrative fines and penalties pursuant to this Act;

[c] The DOE shall, within one (1) year from the effective date of this Act, promulgate rules and regulations providing for a complaint procedure that, without limitation, provides the party alleged to have engaged in anticompetitive or abusive activities with

**SEC. 37. *Affiliated Suppliers.*** - In order to prevent Anti-Competitive Conduct, Service Contractors, Gas Transmission Utilities and Gas Distribution Utilities that own or control Affiliates that are Suppliers shall conduct their business as follows:

(a) No preference will be given to the Affiliated Supplier over other Persons through contracting for available capacity, scheduling, balancing, curtailment priority or Tariffs;

(b) Marketing information provided to the Affiliated Supplier will be provided to any non-Affiliated Supplier that is a competitor or potential competitor;

(c) Employees of the Affiliated Supplier shall, to the maximum extent possible, function independently in making business decisions; and

(d) Books of accounts and records of the Affiliated Supplier shall be maintained separately.

## **CHAPTER XII TAXES**

**SEC. 38. *Franchise Taxes.*** - Gas Transmission Utilities and Gas Distribution Utilities shall pay a Franchise tax equivalent to two percent (2%) of gross revenues obtained from the rendering of Natural Gas Transmission or Distribution services, as appropriate, pursuant to Republic Act No. 8424, otherwise known as the comprehensive Tax Reform Law, as the same may be amended from time to time. Franchise taxes imposed shall be in lieu of all other taxes imposed under existing law.

**SEC. 39. *Excise Tax.*** - The Supply of Natural Gas to the Contestable Market shall be the only component of the gas retail rate which shall be subject to excise taxes under the Republic Act No. 8424, otherwise known as the Comprehensive Tax Reform Law, as the same may be amended from time to time.

**SEC. 40. *Withdrawal of Exemptions.*** - In order to achieve the declared policies of this Act, including the promotion of fair and non-discriminatory treatment of public and private sector entities in the development of the domestic natural gas delivery infrastructure, all existing tax exemptions applicable to Persons engaged in the Transmission or the Distribution of Natural Gas, insofar as such exemptions relate to revenues derived from the Transmission or the Distribution of Natural Gas, shall, any law to the contrary notwithstanding, be deemed revoked as of the effectivity of this Act.

## **CHAPTER XII1 ADMINISTRATIVE FINES AND PENALTIES**

**SEC. 41. *Administrative Fines and Penalties.*** –

(a) The administrative fines and penalties that shall be imposed by the DOE for Sec. 36 and any violation of or non-compliance with this Act or the implementing rules and regulations for this Act shall range from a minimum of fifty thousand pesos (P50,000.00) to a maximum of fifty million pesos (P50,000,000.00);

(b) Any Person who is found to have engaged in any of the prohibited acts pursuant to Section x hereof shall suffer the administrative penalty or fine ranging from ten thousand pesos (P10,000.00) to ten million pesos (P10,000,000.00), at the discretion of the DOE;

(c) The members of the Board of Directors of any Person that violates the provisions of this Act may be fined by an amount not exceeding double the amount of damages caused by the offender at the discretion of the DOE. This rule shall apply to the members of the Board who knowingly or by neglect allow the commission or omission under the law;

(d) Any party to an administrative proceeding may, at any time, make an offer to the DOE, conditionally or otherwise, for a consent decree, voluntary compliance or desistance and other settlement of the case. The offer and any or all of the ultimate facts upon which the offer is based shall be considered for settlement purposes only and shall not constitute an admission by the party making the offer of any violation of the laws, rules, regulations, orders and resolutions of the DOE, nor as a waiver to file any warranted criminal actions;

(e) In addition Congress may, upon recommendation of the DOE, revoke such Franchise or privilege granted to the party who violated the provisions of this Act.

#### **CHAPTER XIV ANTI-PILFERAGE PROVISIONS**

**SEC. 42. *Pilferage.*** - It is hereby declared unlawful for any Person to:

(a) Tap, make or cause to be made any connection with any Gas Transmission System or Gas Distribution System without previous authority or consent of the Gas Transmission Utility or Gas Distribution Utility concerned;

(b) Tamper, install or use tampered meters or any other device which interferes with proper or accurate registry or metering of Natural Gas flows or otherwise results in its diversion in a manner whereby Natural Gas is stolen or wasted;

(c) Damage or destroy any Natural Gas meter, equipment, pipeline or conduit or any part of a Gas Transmission System or Gas Distribution System or allow any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of Natural Gas flows; and

(d) Knowingly use or receive the direct benefit of Natural Gas delivery service obtained through any of the acts mentioned in subsections (a), (b), and (c) above.

**SEC. 43. *Theft of Equipment and Materials.*** - It is hereby declared unlawful for any person to:

(a) Cut, saw, slice separate, split, severe, smelt, or remove any portion of a Gas Transmission System or Gas Distribution System, including pipeline materials and meters, from any installation or place of installation or any other place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located, without the consent of the Gas Transmission Utility or Gas Distribution Utility concerned, whether or not the act is done for profit or gain;

(b) Take, carry away or remove or transfer, with or without the use of a motor vehicle or other means of conveyance, load, carry, ship or move from one place to another, whether by land, air or sea, any portion of a Gas Transmission System or Gas Distribution System, including pipeline materials or meters, from any installation or place of installation, or any place or site where it may be rightfully or lawfully stored, deposited, kept, stocked, inventoried, situated or located without the consent of the Gas Transmission Utility or Gas Distribution Utility concerned, whether or not the act is done for profit or gain; and

(c) Store, possess or otherwise keep in his premises, custody or control, without lawful purpose, any portion of a Gas Transmission System or Gas Distribution System, including pipeline materials or meters, without the consent of the Gas Transmission Utility or Gas Distribution Utility concerned, whether or not the act is done for profit or



**SEC. 44. Penalties. -**

(a) **Violation of Section 42.** The penalty of *prision mayor* or a fine ranging from Ten thousand pesos (P10,000.00) to Twenty thousand pesos (P20,000.00) or both, at the discretion of the court, shall be imposed on any Person found guilty of violating Section 42 hereof.

(b) **Violation of Section 43.** The penalty of reclusion temporal or a fine ranging from Fifty thousand pesos (P50, 000.00) to One hundred thousand 10 pesos (P100, 000.00) or both at the discretion of the court, shall be imposed on any person found guilty of violating Section 42 hereof.

(c) **Provision common to violations of Sections 42 and 43 hereof.** If the violation of Section 42 and Section 43 hereof is committed by, or in connivance with, an officer or employee of the Gas Transmission Utility or Gas Distribution Utility concerned, such officer or employee than the penalty provided herein, and forthwith be dismissed and perpetually disqualified from employment in any public or private utility or service company and from holding any public office.

If the violation of Section 42 and Section 43 hereof is committed by a partnership, firm, corporation, association or any other legal entity, including a government-owned or controlled corporation, the penalty shall be imposed on the president, manager and each of the officers thereof who shall have knowingly permitted, failed to prevent or was otherwise responsible for the commission of the offense.

**CHAPTER XV  
FINAL PROVISIONS**

**SEC. 45. Implementing Rules and Regulations.** - The DOE shall, in consultation with relevant government agencies, the Natural Gas Industry participants, non-government organizations and end-users, promulgate Implementing Rules and Regulations of this Act within *six* (6) months from its date of effectivity.

**SEC. 46. Separability Clause.** - If for any reason, any provision of this Act is declared unconstitutional or invalid, the other parts or provisions hereof which are not affected thereby shall continue to be in full force and effect.

**SEC. 47. Non-Retroactivity Applicability and Repealing Clause.** - The provisions of Republic Act No. 387, otherwise known as the Petroleum Act of 1949, as amended, insofar as said provisions relate to the Transmission and Distribution of Natural Gas by pipeline concessionaires or other concessionaires, as such terms are defined in the Petroleum Act of 1949, Section 1 I(b) thereof obligating the Philippine government to grant pipeline concessions for the Transmission and Distribution of Natural Gas under specified circumstances, are hereby repealed or amended. The provisions of Presidential Decree No. 87, as amended, insofar as the provisions thereof relate to the Transmission and Distribution of Natural Gas by Service Contractors, as such term is defined in Presidential Decree No. 87, as amended, are hereby amended. All other laws, decrees, executive orders, rules and regulations, circulars or other governmental issuances referring to the Transmission, Distribution, or Supply of Natural Gas, or otherwise authorizing any governmental or other entity to issue licenses, permits, certificates or other authorizations for the Transmission, Distribution, or Supply of Natural Gas, are hereby repealed or amended accordingly. Further, all other laws, decrees, executive orders, rules, regulations, circulars or other governmental issuances defining the term "Natural Gas" are hereby amended such that the definition of Natural Gas in this Act shall be deemed the definition of "Natural Gas" for purposes of the said laws, decrees, executive orders, rules, regulations, circulars or other governmental issuances. Notwithstanding the foregoing, nothing in this Act shall be deemed to revoke or otherwise modify any existing concession granted under the Petroleum Act of 1949, as

amended, certificate of public convenience or certificate of public convenience and necessity granted pursuant to the Public Service Law, as amended, specific congressional Franchise for the Transmission, Distribution or Supply of Natural Gas or other administrative or regulatory permit or contract, with concession, certificate, Franchise, permit or contract shall be allowed to its full term but may not be renewed except pursuant to the provisions of this Act.

**SEC. 48. *Effectivity Clause.*** - This Act shall take effect on the fifteenth (15th) day following its publication in at least two (2) national newspapers of general circulation.

Approved,