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**United States Agency for International Development**

**GAS REGULATORY AND  
RESTRUCTURING ASSISTANCE  
IN ROMANIA**

Contract  
IQC No. LAG-I-00-98-00006-00  
Task Order No. 814

**8<sup>th</sup> QUARTERLY REPORT**

**July 1 – September 30, 2002**

NEXANT, Inc.  
A Bechtel Affiliated Company



23865-814-0019

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**GAS REGULATORY AND  
RESTRUCTURING ASSISTANCE  
IN ROMANIA**

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## I. Background

The objective of USAID's Gas Regulatory and Restructuring Assistance Project in Romania (hereinafter referred to as "The Project") is to provide technical assistance to the Romanian Ministry of Industry and Resources ("MoIR"), formerly Ministry of Industry and Trade ("MoIT"), the Romanian National Gas Regulatory Authority ("ANRGN"), and the gas sector companies that, prior to Romanian Governmental Decision No. 334 of April 2000, were part of the Romanian National Gas Company, ROMGAZ SA<sup>1</sup>.

The Project supports USAID's Strategic Objective 1.5: "A more economically sustainable and environmentally sound energy sector."

Assistance under The Project is provided in two areas:

- 1) Assistance to ANRGN, with participation of the gas sector companies, in establishing the rules of a liberalized, competitive natural gas market through the issuance of: (a) a Commercial Code, and (b) a Technical Code; and
- 2) Assistance to the successor companies of ROMGAZ in implementing reforms in the gas sector, by: (a) assisting the new companies to set up financial accounts, (b) assisting the Commercial Operator/Market Administrator to manage its responsibilities, and (c) assisting in defining the role and operations of the Gas Dispatcher/Transmission Operator.

Nexant, Inc. ("Nexant"), a Bechtel Technology & Consulting Company and the successor to Bechtel National Inc. for implementation of USAID's IQC #LAG-I-00-98-0006, is implementing The Project under Task Order #814 ("Gas Regulatory and Restructuring Assistance in Romania") of that IQC. Work began on September 25, 2000, with an estimated completion date of September 30, 2002.

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<sup>1</sup> Governmental Decision No. 334 of April 2000 dissolved the National Gas Company, "ROMGAZ SA," and created the following state-owned corporations for the production, transportation, storage and distribution of natural gas in Romania: Transgaz (transmission), Exprogaz (production), Depogaz (storage), Distrigaz Nord (distribution), and Distrigaz Sud (distribution). On June 14, 2001, Governmental Decision No 575 merged Exprogaz with Depogaz to form a new company for production and storage under the name ROMGAZ, SA.

## II. Summary of Project Activities During the Reporting Period

### Overview

The reporting period (July 1-September 30, 2002), the eighth and last quarter of The Project's period of performance saw the achievement of all of our major Task Order objectives, as refined by our Work Plans. (The status of project deliverables is presented in Appendix A.) This period saw the publication of critical Market Rules, which provide a framework for the free market for natural gas that was our project's primary objective. Other activities included project team meetings around Romania, our 6<sup>th</sup> and final Key Issues Seminar and the handing-over of computer equipment to our counterpart, ANRGN.

### *Market Rules*

Of great importance from the perspective not only of our project but also for the creation of a framework for a free market for natural gas in Romania, was the publication of Market Rules – a Commercial and a Technical Code. These essential documents, which form the foundation for regulatory reform and the sustainability of a competitive gas market in Romania, were adopted in June and published in the *Official Gazette* shortly thereafter.<sup>2</sup>

USAID, through our project, supported this critical effort with technical assistance and advisory services that included on-site consulting, seminars and a Study Tour to the USA. William Cochran led this effort with respect to the Technical Code; Robert Borgstrom led assistance with the Commercial Code. Final comments were prepared by the Project Team based upon discussions at meetings in Bucharest and Medias during the summer. These final views were presented at our closing seminar in September and, it is hoped that they will serve as the basis for the continuous monitoring and improvement of the Codes, which will ensure the vitality and sustainability of these critical documents.

Comments on the Commercial and Technical Codes appear in Appendices B and C, respectively.

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<sup>2</sup> The Commercial Code, ANRGN Decision 636 of June 19, 2002 was published in *Monitor Oficial* number 506 on July 12, 2002; the Technical Code, ANRGN Decision 616 of June 10, 2002, was published in *Monitor Oficial* 408 on June 24, 2002.

### *Project Team Meetings*

In July the Project Manager met with each of the counterpart organizations to discuss lessons learned over the course of the project and to receive suggestions that might be passed along to USAID for consideration in the possible development of future project activities. Meetings were held at Distrigaz Sud (Bucharest) on July 17; Distrigaz Nord (Targue Mures) on July 18; Romgaz and Transgaz (Medias) on July 19; and at ANRGN (Bucharest) on July 31. These discussions highlighted some important, but disturbing points:

- Although our colleagues were reasonably frank in these small group discussions, in general our partners are still very much reluctant to speak openly. Despite public pronouncements to the contrary, the Romanian gas sector is still very closely controlled and that control exerts a powerful distinctive for the freedom of thought and openness of dialogue that is necessary if (1) the Romanian gas companies are to participate in the economic benefits of private sector investment; and (2) the workers and managers of the gas sector, as represented by our colleagues, are to be successful competitors for employment in the newly-privatized units.
- We have continuously stressed that the basis of our project is a simple principle – i.e. that the free market is the best guarantor of the public interest. It is only by accepting this principle that the efforts of our project can meaningfully be applied to the problems of Romania's gas sector. It was disturbing, therefore, that the majority of our Project Team members do not believe that there is a broad acceptance by Romanians of this principle.

There are those who will argue that these two points underscore the pre-maturity of our program. I would argue, however, that these negative views only stress that even greater emphasis must be placed upon the very basics of economic reform with a view toward gaining a general acceptance thereof by which, and only by which, the Romanian gas sector will make the desired transition from state control to a free market.

### *6th<sup>h</sup> Key Issues Seminar*

Our final seminar was conducted in Bucharest on 19 September.<sup>3</sup> The objectives of this meeting were: (1) to review, critically, the accomplishments of our project, and (2) to discuss next steps for possible future projects.

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<sup>3</sup> The Agenda for this Seminar is included at Appendix D.

Constructive and congratulatory opening messages were provided on behalf of the Ministry of Industry and Resources; by Mihai Goage on behalf of ANRGN's president, Dan Pantilie; and by Gheorghe Radu, now with Romgaz, who was ANRGN's president from January 2001 through March 2002.

It was encouraging that, in giving the floor to the Project Team members who were present, each said that our project effort had provided them with new information and perspectives – “new tools” – that could be applied to their current and future tasks. There were interesting and useful discussions of the Commercial and Technical Codes and the comments raised by the consultants. (See appendices B and C.) Transgaz added to the discussion of the Technical Code with a presentation from that company's perspective. In general we are very pleased that the Codes exist, but are hopeful that they will truly become evolutionary documents reflecting not only the conditions of this transitional period, but also the desired objectives of a free market.

Mr. Constantin Nedelcu of the Privatization office made an interesting and timely presentation on the Ministry's plans for private sector investment in Distrigaz-Nord and Distrigaz-Sud. It was disappointing that there were no comments provided by Distrigaz-Nord or Distrigaz-Sud. The absence of a view from our Project Team on this subject underscores the reality that the company management's are taking a re-active position on privatization of their businesses. Even if strategic decisions are being taken at the level of the Ministry (and above), there are many things that the companies can be doing to make themselves more efficient and business-oriented – i.e. commercially attractive to potential investors – and this is, apparently, not being done. This lack of initiative is particularly troublesome in that it will be the managers and workers of Distrigaz-Nord and Distrigaz-Sud who have the most to gain (or lose) by privatization, since they must quickly learn to make the transition from state-ownership and direction to the more competitive world of private sector initiative.

There was also a discussion of ANRGN's public participation strategy. This strategy was developed in December 2001 with the expectation that public meetings would soon be held to explain ANRGN's regulatory decisions and help educate and involve stakeholders with respect to pertinent gas sector issues. It is troubling that, by September 2002, there has still been no out-reach by ANRGN into the stakeholder community, particularly since there had been plans to do so under ANRGN's previous management. At the seminar we were told that public meetings would be conducted in the future.

#### *Office Closure*

The project office in Bucharest closed on Friday, 20 September. Project activities were completed on Friday, 27 September, with the handing-over of the computer equipment to ANRGN. The Chief of Party ended his residency in Romania on Saturday, 28 September; thereafter, final reports were prepared at Nexant's office in Washington, DC.

### III. Future Activities

With the conclusion of our period of performance, USAID has no immediate plans for follow-on activities. This suspension of activities is unfortunate; given the disincentives for independent action (as discussed above), it is doubtful that many of the project's free-market initiatives will be developed without strong, external follow-up.

### IV. In-Country Staff Activities During the Reporting Period:

#### Chief of Party / Resident Project Manager

Mr. Robert Borgström (Project Manager, Nexant, Inc.)	4 July – 28 August <sup>4</sup> 3 September – 28 September <sup>5</sup>
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#### Short-Term Advisors

Mr. William Cochran (GasConsult / Nexant, Ltd., London)	18-20 September.
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Trade & Finance Specialist (Task 2.2)  
Participant in Joint 6<sup>th</sup> Key Issues Seminar (Technical Code)

#### CCN

Mr. Florin Tobescu (Associate, Nexant, Inc.)	Full Time through Sept. 20.
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Ms. Doina Badea (ANRGN) <sup>6</sup>	As assigned by ANRGN
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<sup>4</sup> With USAID's prior concurrence, the project manager was away from Romania on holiday, August 29-September 2.

<sup>5</sup> Following the conclusion of project activities and the closure of the project office in Bucharest on Sept. 20, the project manager completed his residency in Romania on September 28, 2002, and returned to the USA.

<sup>6</sup> Ms. Doina Badea is an employee of ANRGN and her services to the project are provided without cost to USAID. Prior to 30 June 2001, Nexant, Inc. compensated ANRGN for Ms. Badea's services; from 1 July 2001 onward, Ms. Badea's services were contributed by ANRGN without charge.

## Volunteers<sup>7</sup>

The project had no volunteers in-country during the reporting period.

### Volunteers in prior reporting periods have been:

Mr. Robert Borgström, Project Manager

Nexant, Inc.

*Chief of Party<sup>8</sup>*

Mr. Peter Danforth, Bechtel (ret.), Washington, DC.

*Key Issues Seminar #2 (Bazna: June 2001) &*

*Study Tour Host (Washington, DC: February 2002)*

Mr. David A. Foti, Senior Manager, Accenture, Houston, Texas

*Key Issues Seminar #3 (Poiana Brasov: September 2001)*

Mr. William J. Froehlich, Lead Counsel, FERC, Washington, DC

*Key Issues Seminar #4 (Bucharest: January 2002)*

*Study Tour Host (Washington, DC: February 2002)*

Mr. William J. Moran, Jr., Vice President

Merrill Lynch

Washington, DC

*Key Issues Seminar #5 (Bucharest: May 9, 2002)*

Mr. Richard Waryn, Director, Emerging Markets Partnership, Washington, DC

*Key Issues Seminar #2 (Bazna: June 2001)*

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<sup>7</sup> Time contributed by the volunteer and/or the volunteer's employer.

<sup>8</sup> Time provided by Nexant, Inc., without charge to USAID, during the "funding crisis" (see 7<sup>th</sup> Quarterly report)

## V. Budget Activity

As of August 23, 2002, we had expended 95.8% of our project's budgeted resources – i.e., 93.7% of our LoE, 94.1% of our Labor Budget, and 100% of our budgeted ODC's.

### As Billed Per Task Order<sup>9</sup>

	Budget <sup>10</sup>	Totals at 6/30/02	7/1/02-8/23/02 <sup>11</sup>	Total to 8/23/02	Remaining Budget
Level of Effort (days)	1,324	1,200	40	1,240	84
% Total	100.0	90.6	3.0	93.7	6.3
Labor (\$)	861,049	755,895	34,510	810,405	50,644
% Total	100.0	90.1	4.0	94.1	5.9
ODC (\$)	336,648	336,648	(42)	336,606	42
% Total	100.0	100.0	-	100.0	-
Total (\$)	1,197,697	1,112,543	34,468	1,147,011	50,686
% Total	100.0	92.8	2.9	95.8	4.2

<sup>9</sup> Proposed restructuring includes only paid labor (subject to reimbursement from USAID) + volunteers.

<sup>10</sup> Task Order Modification #02, Approved by USAID, December 19, 2001.

<sup>11</sup> As Per Nexant Invoice 814-23 dated September 9, 2002.

### Per Funding To Date

In May 2002, USAID increased the funding for our project from \$1,000,035 to \$1,197,697. As shown, below, over 95% of these funds were expended over the period of performance, leaving a balance of \$50,686. It is expected that, when hours are reported for the month of September 2002, the project's funding will have been fully utilized by the conclusion of the period of performance.

Total Funded (\$)	1,197,697		1,147,011	50,686
% Total			95.8	4.2

### Participation by Volunteers and Others Not Paid by USAID

Although there was no volunteer activity during the reporting period, the project has, to date, benefited from 448 days LoE without cost to USAID. This amount is well in excess of the 77 days that were budgeted and reflect, in large part, the contribution of professional services by Nexant, Inc. (169 days) and ANRGN (218 days). Individual consultants (and their respective companies) have contributed a total of 51 days LoE as participants in our Key Issues Seminars and as hosts of our Study Tour.

LoE (Days)	Budget	As of 6/30/02	7/1/02 – 9/30/02	Total to 9/30/02	S = Seminar ST = Study Tour CoP = Chief of Party
<u>Volunteers</u>					
<i>Danforth</i> <sup>12</sup>		10		10	<i>K#2 + ST</i>
<i>Waryn</i> <sup>13</sup>		9		9	<i>K#2</i>
<i>Foti</i> <sup>14</sup>		10		10	<i>K#3</i>
<i>Froehlich</i> <sup>15</sup>		12		12	<i>K#4 + ST</i>
<i>Moran</i> <sup>16</sup>	77	10		10	<i>K#5</i>
<i>Borgström</i> <sup>17</sup>		13		13	<i>CoP</i>
Sub Total		64	0	64	
CCN - <u>Clerical</u> <sup>18</sup> Contributed by:					
<i>ANRGN</i>		218		218	
<i>Nexant, Inc.</i>		156		156	
Sub Total	0	374	0	374	
Total	77	448	0	448	

<sup>12</sup> Retired; formerly an employee of Bechtel, San Francisco, California.

<sup>13</sup> An employee of the Emerging Markets Partnership, Washington, DC

<sup>14</sup> An employee of Accenture, Houston, Texas.

<sup>15</sup> An employee of the Federal Energy Regulatory Commission, Washington, DC

<sup>16</sup> An employee of Merrill Lynch, Washington, DC

<sup>17</sup> Cost of CoP's labor provided by Nexant, Inc. without cost to USAID during "funding crisis".

<sup>18</sup> Full-time clerical assistance provided by ANRGN without cost to USAID; Nexant through 30 June 2001 provided payment for this assistance; from 1 July 2001 through 16 May 2002 the assistance has been contributed by ANRGN. Following 16 May 2002, services are provided on an as needed basis.

Appendix A: Schedule of Tasks & Deliverables

Appendix A

Schedule of Tasks & Deliverables

Except as Noted, All Tasks have been completed.

1. Work Plans

- 1.1. Work Plan (delivered – 11/30/2000)
- 1.2. Revised Work Plan (submitted to USAID – 8/6/2001)

2. Quarterly Status Reports

- 2.1. Quarterly Status Report 1 – October-December 2000 – delivered
- 2.2. Quarterly Status Report 2 – January-March 2001 – delivered
- 2.3. Quarterly Status Report 3 – April-June 2001 - delivered
- 2.4. Quarterly Status Report 4 – July-September 2001 - delivered
- 2.5. Quarterly Status Report 5 – October-December 2001 - delivered
- 2.6. Quarterly Status Report 6 – January-March 2002 - delivered
- 2.7. Quarterly Status Report 7 – April-June 2002 - delivered
- 2.8. Quarterly Status Report 8 – July-September 2002 – herewith delivered

3. Completion Report – to be provided in October 2002.

4. Technical Reports

Task 2 – Technical Assistance to Regulation of Gas Markets

Sub-Task 2.1 – Market Rules

Market Model

- 2.1.1 Technical Memorandum on Gas Industry Market Structures in Other European Countries (Task 2.1.1) – delivered May 2001
- 2.1.2 Technical Memorandum on Proposed Market Model for Romania – completed.
- 2.1.3 Commercial Code
  - 2.1.3.1 Discussion paper outlining a recommended Commercial Code – working draft delivered in August 2001.
  - 2.1.3.2 Comments on drafts of Commercial Codes by ANRGN – continuing.
  - 2.1.3.3 Other memoranda on Commercial Code issues
- 2.1.4 Technical Code
  - 2.1.4.1 Discussion paper outlining a recommended Technical Code -- working draft delivered in October 2001
  - 2.1.4.2 Comments on drafts of Technical Codes by ANRGN – continuing.
  - 2.1.4.3 Other memoranda on Technical Code issues

Appendix A: Schedule of Tasks & Deliverables

Sub-Task 2.2 – Public Information

- 2.2.1 Strategy for communications with the public (December 2001)
- 2.2.2 Reports on public participation events<sup>1</sup>
- 2.2.3 Papers for public dissemination<sup>1</sup>
- 2.2.4 Other memoranda on developing public information

Sub-Task 2.3 – Training

- 2.3.1 Training Needs Assessment
  - 2.3.1.1 1<sup>st</sup> Year Assessment – Feb. 2001
  - 2.3.1.2 2<sup>nd</sup> Year Assessment – Sept. 2001
- 2.3.2 Key Issues Seminar 1 – Regulatory Issues (May 24, 2001) – Slides/handouts delivered.
- 2.3.3 Key Issues Seminar 2 – Gas Industry Issues (June 7, 2001) – Slides/handouts delivered
- 2.3.4 In-House Conference on Public Participation Strategy (December 2001)<sup>2</sup>
- 2.3.5 Reports from attendance at Regional Meetings in CEE/NIS under USAID Sponsorship
- 2.3.6 Regulatory Law Seminar (January 2002)<sup>3</sup> – Slides/handouts delivered.

Task 3 – Technical Assistance to the Gas Industry

Sub-Task 3.1 – Financial Sustainability of the New Gas Companies

- 3.1.1 (Included within 2.3.3)
- 3.1.2 Report on Financial Unbundling of ROMGAZ (ongoing)
- 3.1.3 Other Memoranda

Sub-Task 3.2 – Establishment of Commercial Operator

- 3.2.1 Technical Memorandum on Organization & Management
- 3.2.2 Recommendations on Design/Operational Issues
- 3.2.3 Comments on Rules and Methods proposed by counterparts

Sub-Task 3.3 – Strengthening of the Gas Transmission Dispatcher (2<sup>nd</sup> Quarter 2002)

- 3.3.1 Technical Memorandum on Organization & Management
- 3.3.2 Comments on Rules and Methods proposed by Gas Dispatcher
- 3.3.3 Report on Resource Requirements

Sub-Task 3.4 – Training

- 3.4.1 An updated Training Needs Assessment (September 2001)

<sup>1</sup> ANRGN has not implemented the Public Participation Strategy that was developed in December 2001; despite consultant recommendations and offers of support, no follow-on activities were scheduled.

<sup>2</sup> Topics presented at the Joint USAID/EU Conference on Sept. 27-28, 2001. An in-house conference on Public Participation was conducted at ANRGN on Dec. 19, 2002; ongoing activities are scheduled for 2002.

<sup>3</sup> The “Regulatory Law Seminar” was included within the program of the 4<sup>th</sup> Key Issues Seminar on January 17-18, 2002.

Appendix A: Schedule of Tasks & Deliverables

- 3.4.2 Joint USAID/EU Conference on Gas Sector Transitional Issues (Sept. 2002)
- 3.4.3 4<sup>th</sup> Key Issues Seminar (January 2002)– Market Rules<sup>4</sup> - Slides/Handouts Delivered. - Market Operator, Dispatching Issues<sup>5</sup>
- 3.4.4 Study Tour to the USA (February 2002)
- 3.4.5 Seminar to Follow-up the Study Tour<sup>6</sup> (May 2002)
- 3.4.6 An Additional Seminar (September 2002) on Topics TBD
- 3.4.7 Other trainings to be determined based upon the updated Training Needs Assessment.

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<sup>4</sup> 4<sup>th</sup> Key Issues Seminar covered all four project focus areas: Market Rules-Commercial Code; Market Rules-Technical Code; Public Participation and Financial Sustainability.

<sup>5</sup> Market Operator and Dispatching issues to be included in a future seminar, based upon analyses to be conducted during the 2<sup>nd</sup> quarter 2002.

<sup>6</sup> Study tour reports to be included within the program of the 5<sup>th</sup> Key Issues Seminar on May 9, 2002.

Appendix B: Comments on the Commercial Code

August 2002

COMMENTS on the COMMERCIAL CODE<sup>1,2</sup>

**Summary**

On July 12, 2002, ANRGN's Commercial Code, called "Natural Gas Market Commercial Norms"<sup>3</sup>, was published in the Official Gazette (*Monitor Oficial*). Support for the drafting of this Code was one of the four major focus areas of our USAID-funded project, "Gas Regulatory & Restructuring Assistance in Romania."

Publication of the Code is an important achievement and a critical step in the reform process. The resulting document is the first comprehensive set of Market Rules for the Romanian gas sector following the restructuring of Romgaz in 2000 and is, therefore, a useful foundation for guiding the further transformation of the sector from state ownership and control to that of a free market within the framework of independent regulation.

The following comments review issues raised and recommendations made by the Project Team during the period that the Code was being developed. Much of that input has been reflected in the Code that has been published in *Monitor Oficial*. Nonetheless, improvements to the Code will be required in order to create an environment that embraces free market principles and pro-actively encourages constructive private sector investment. The following comments can serve as the basis for those improvements.

**General Comments**

- 1) The objective of our project – the creation of a free market for natural gas in Romania – is predicated upon the firm belief that a competitive free market, rather than a central-plan of resource allocation, is the best guarantor of meeting the public need. The Code is an important instrument for the implementation of this principle.

We look, therefore, for the Code to be written in such a manner that it supports free market objectives, pro-actively and without compromise. In particular, the language of the Code must foreclose any possible opportunity for the Code being used as an excuse to perpetuate a controlling regime in the Romanian natural gas sector.

<sup>1</sup> These comments were prepared by Robert Borgström, Charles Ebinger and Florin Tobescu of Nexant, Inc., and have been reviewed by Virgil Musatescu, Senior Energy Advisor, USAID/Bucharest.

<sup>2</sup> ANRGN's Decision 636, June 19, 2002, published in the *Monitor Oficial* No. 506 (July 12, 2002).

<sup>3</sup> Hereinafter the terms "Code" and "Norms", when capitalized, will refer interchangeably to the ANRGN document, "Commercial Rules Regarding Natural Gas Market" (2002) as translated by ANRGN following its publication in the *Monitor Oficial*.

Appendix B: Comments on the Commercial Code

Consistent with that objective, the Code acknowledges the desirability of “competition, transparency” and “non-discriminatory access.”<sup>4</sup> However, the Code also includes many references to procedures of “control” and “allocation”, which are contradictory to the essence of free market principles. These inconsistencies must be corrected in favor of supporting the establishment of a truly free market for natural gas in Romania.

- 2) Articles 3 and 4 of the document state the scope and purpose of the Norms, however the Norms do not fully meet the purposes as stated. In particular, the Norms identify the market participants and describe duties and responsibilities, but the Norms do not specify the rules concerning the interaction of the various participants in the natural gas market. This is an essential element of the Market Rules documentation that must be addressed.

Among the items that need to be addressed are:

- references to the types of gas transport frame contracts, such as Firm Transportation, Interruptible Transportation, and Exchange and Displacement;
- references to the types of gas distribution frame contracts such as Firm Service, Interruptible Service, General Service, etc;
- classes of captive customers such as domestic (residential), commercial, and industrial;
- references to the types of underground storage frame contracts such as Firm Storage Service and Interruptible Storage Service;
- firm and interruptible gas sale-purchase and acquisition contracts;
- rules for shipping gas on the SNT such as nominations procedures (daily and forecasts) and definition of the gas day for nomination purposes; and
- penalties for shippers who do not abide by the rules for nominations, such as taking more or less gas than nominated or delivering less gas than nominated.

In many instances, we know that explanatory rules and methodologies do exist. Indeed, throughout the document there are references to other documents including:

- Regulation,
- Technical Norms of Transmission and Distribution Networks,
- Frame (Model) Contracts,
- Methodology,

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<sup>4</sup> See “Objectives” at Section 2 of the Code.

Appendix B: Comments on the Commercial Code

- Criteria,
- Central List of Natural Gas Eligible Customers, and
- “other technical regulations.”

These documents need not be attached to the Code, but they should be included by a complete and proper reference and, to the extent appropriate for the reader’s basic understanding, pertinent parts referenced by the Commercial Norms should be explained. It would also be helpful to include, as an Annex, a listing of all gas sector laws and regulations to date. The creation of the Code is an important opportunity to build a comprehensive reference work for all market participants, an effort that will achieve another of our project’s goals in the area of public information and participation in the development of energy policy.

- 3) Throughout the document the distinction between the ownership of natural gas and the ownership and operation of the transportation and the storage systems is ambiguous. If the owners and the operators of the pipelines and storage facilities are not different entities, then the Norms allow activities that will hamper the operation of a non-discriminatory, open access system. For example, transporters can conclude natural gas-sales contracts, which means that they can transport their own gas. Such contracts generally are not allowed in an open access transportation system because, at a minimum, they lead to accusations of discriminatory gas transportation practices.

There are, for example, no distinction between cushion gas and working gas in the sections on underground storage operations. The Commercial Norms state that the underground storage operator may conclude “natural gas supplying contracts for natural gas that he owns.” If this refers to cushion gas there is no problem. However, if this refers also to working gas, then the same problem noted above for transporters occurs because the Commercial Norms state that storage licensees must provide open access, non- discriminatory services to producers, suppliers and/or eligible consumers. This also implies that storage operators cannot be producers, suppliers or eligible consumers. Thus, one could conclude that “the natural gas that he owns” is cushion gas, but it is not clear.

- 4) Some of the definitions in the Glossary of Terms could be made more explicit. For example, it should be stated that natural gas is mostly methane. Also, it is not clear, as mentioned above, whether System Operator can also be the owner of the system. In particular, the difference between “System Operator of the Transportation System” (at Glossary #12) and “Transporter” (#24) needs better definition?

And lastly,

- 5) There is a provision within the Code (at Article 60) that “a relevant legislative event” could be the rationale for such future revisions and updates of the Code. This is too loosely worded and open

Appendix B: Comments on the Commercial Code to a variety of interpretations. There needs to be an explicit triggering mechanism for making updates and revisions to the Code and this mechanism must include the opportunity, within an open and public forum, for all stakeholders to participate in the reform.

### Specific Comments

#### Art. 4)

- The “Methodology” (item “d”), “Regulation” (item “e”) and “Technical Norms” (item “f”) refer to existing documentation that should be incorporated into the Code by explicit reference and, as appropriate, more clearly explained to the reader.

#### Art. 5)

- There is no mention in this article of ANRGN’s crucial role as an *independent* regulator, providing the framework within which a free market can be sustained and by which private sector investment is encouraged.

#### Art. 6)

- Re: item “f” -- The methodology for calculating tariffs and prices should take account into the actual and prospective costs of business transactions, but they should NOT reflect the “protection of natural gas consumers’ interests” such as a consumers’ ability to pay for natural gas service. We recognize the realities of Romania’s lengthy economic transformation and the political sensitivity of increasing prices to cover costs, but the sale of natural gas in a free market is a commercial transaction that should not be confused with a societal responsibility. The costs of meet such societal objectives cannot be imposed upon service providers in the private sector.
- The “competent bodies” in item “h” need to be identified.
- The “monitoring” responsibility at item “j” is not unique to ANRGN; other agencies, such as NAMR have this responsibility over various segments of the natural gas sector.
- The term “regulates” at item “k” is far too broad and open-ended; there needs to be greater specificity about what ANRGN is expected to do as part of its regulatory function.
- It should be made clear that the “procedure for supervision and control” is internal within ANRGN and not an opportunity for taking operational control of other gas sector entities.

#### Art. 9)

- An example or description of frame contracts should be attached.
- No distinction is made about categories of service such as Firm Transportation, Interruptible Transportation, etc. This is also true for distribution, storage and purchase-sale, acquisition contracts. How do sale-purchase and acquisition contracts differ?

#### Art. 10)

Appendix B: Comments on the Commercial Code

- There could be a reference to the Technical Code at objective “e” since that goal was a purpose of developing that Code.
- “Efficiency” is incompletely defined. The word should be used in a context that explicitly indicates that the objective is business/commercial efficiency, which is the concern of the operating companies, not “efficiency” in the allocation and/or utilization of resources, which is an expected result, but not the *controlling* principle, of free market transactions.

Art. 11)

- This is not organization as the title implies, but perhaps “Underlying Principles.”
- The term “compulsory public service” may be interpreted as meaning that there are certain (undefined) public service *obligations* that will be allowed to take precedence over economic decisions made by investor-owned energy companies in the gas sector. If so, this principle will be an impediment to investment.

Art 14)

- There appear to be separate Regulations for the transport system and the storage systems. These Regulations should be attached and/or important provisions thereof should be discussed specifically within the Commercial Norms.

Art. 18)

- The phrase “that has as specific natural gas transport” is unclear. The natural gas transporter’s responsibilities as a licensee should be stated clearly.
- It is inconsistent for a “foreign person” to be authorized responsibilities with respect to something that is part of the “state public domain and... of strategic importance” (Art. 19).

Art. 22)

- Items “c” and “d” indicate that the Transporter will engage in the sale-purchase of natural gas. Ownership of gas by the Transporter will inhibit open access to the system.

Art. 23)

Art 28)

- This article appears to be redundant as it is covered in article 29.

Art. 30)

- Again, operator should not own gas unless it is cushion gas. There is no distinction between cushion gas and working gas.

Art. 31)

Appendix B: Comments on the Commercial Code

- The supplier does not “ensure” that the natural gas is there to meet demand. In a free market, supply and demand are elements of the commercial transaction with penalties for non-performance addressed by the relevant contracts between market participants.

Art. 34)

- The criteria for eligibility and/or the responsibility for establishing the criteria of eligibility should be explained. (See comment on Art. 55.)

Art. 37)

- This is incorrect. Customer “captivity” or “eligibility” is defined by various criteria, each of which is independent of the distribution system’s configuration. An eligible customer is entitled to purchase gas from any supplier whether or not he is directly connected to a high-pressure pipeline or receives gas at a connection to the distribution grid. In either case he is still subject to paying the appropriate transportation and/or distribution charges.

Art. 39)

- The explanation of the Market Operator’s role must be stated more succinctly!
- The rules of “allocation” apply to a controlled-system rather than one in which free market forces will prevail.

Art 40)

- The necessity for ANRGN to become involved in the “analysis and certification” of data is unclear.

Art 41)

- Our understanding is that this calculation is used to set prices and allocate costs among state-owned entities. This must be a temporary procedure, since it cannot apply when there is private ownership in sector entities. There needs to be a provision in the Code for phasing-out this methodology and allowing business units to keep their own accounts of purchases and calculate their own proposed tariffs, which ANRGN may approve in accordance with its established cost of service methodology.

Art 42

- There is no need to have a provision in the Code that obliges licensees to honor their contractual agreements.

Art. 43-44)

- These articles do not specify the rules for third-party access, only that there must be a “written agreement” on behalf of the system operator and that access to the natural gas transportation system is “performed under a regulated regime.” Although we assume that the phrase “regulated regime” is used to differentiate Romania’s option from the “negotiated”

Appendix B: Comments on the Commercial Code approach taken by many other states, the verb “regulate” is undefined and far too vague to be instructive in the Code. .

Art. 46)

- In item “a” there needs to be a better explanation of the conditions under which the transport capacity is “too small.” This could be for technical reasons or because other shippers have used the capacity. The mechanism for deciding how to allocate pipeline capacity must be specified.

Art. 47)

- ANRGN’s “Methodology” for resolving the issue of unjustified access denial should be attached and/or fully explained.

Art. 48)

- This Article is an impediment to private sector investment. The general objectives in this Article are the desired outcomes for a “controlled” regime, but in a free market tariffs are not “established” to meet policy goals, prices are allowed to respond to market signals. The Commercial Code must make clear whether (a) it is supportive of a free market; (b) the intention is for ANRGN to approve tariffs that meet certain cost-of-service principles; or (c) the objective is to perpetuate political control over price-setting mechanisms.

Art. 49)

- The tariff setting methodology, although incomplete as presented in this article, need not be set forth within the Commercial Code. That Methodology should be a separate document or set of procedures, which may vary over time, based upon an agreed set of economic and social principles that are the objectives of sectoral reform.

Art. 50)

- Article 50 is redundant in that Article 6 covers this subject at item “f”.

Art. 55)

- The criteria for being an “eligible” customer is set forth in this section about “Sanctions,” but should be mentioned earlier, such as in Art. 37.

Art. 58)

- The term “Methodology of solving pre-contractual disputes” needs to be explained with references as to specific applicable documentation.

Art. 60)

- There is no need to specify that “a relevant legislative event” could trigger a revision of the Commercial Code.

Appendix B: Comments on the Commercial Code

- The mechanism for updating the Commercial Code, including a process of public notice and comment, is essential in order to make the Code meaningful to stakeholders.

Gas Restructuring and  
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Appendix B: Comments on the Commercial Code

Appendix C: Comments on the Technical Code

August 2002

COMMENTS on the TECHNICAL CODE<sup>1,2</sup>

Summary

On July 12, 2002, ANRGN's Technical Code, called "Technical Code in Natural Gas Sector", was published in the Official Gazette (*Monitor Oficial*). Support for the drafting of this Code was one of the four major focus areas of our USAID-funded project, "Gas Regulatory & Restructuring Assistance in Romania."

Publication of the Code is an important achievement and a critical step in the reform process.

The following comments review issues raised and recommendations made by the Project Team during the period that the Code was being developed. Much of that input has been reflected in the Code that has been published in *Monitor Oficial*. Nonetheless, there are a number of areas where the Code can be made more effective. The following comments and suggestions are made in order to assist in future improvements to the Technical Code.

Detailed comments on the content of the current Technical Code are given below. These confirm that the inconsistencies introduced earlier this year during the consultation process have been addressed and the current proposed Technical Code is now consistent, has a satisfactory structure and technical scope and will be an effective regulatory document.

USAID provided a suggested outline draft technical code to ANRGN in October 2001 and this was jointly developed over the succeeding two-month period into an effective format document. ANRGN have, as was intended, developed this format document into a draft Technical Code. The current draft of the technical code has seen considerable positive development over recent months to the stage where it is now an effective regulatory tool for ANRGN.

This memorandum contains the following Appendices:

- Appendix A – Note on Technical Code (Feb. 2002)
- Appendix B – Note on Technical Code (Mar. 2002)
- Appendix C – Memorandum to ANRGN (April 2002)

Background

Nexant on behalf of USAID has been assisting ANRGN in the drafting of a Technical Code for the gas industry over the past year. Following a number of meetings during the autumn of 2001 a draft format for the Technical Code was agreed in December and since that time ANRGN have been developing the detail in this draft.

<sup>1</sup> These comments were prepared by William Cochran (*Gasconsult*) under contract to Nexant, Inc., and Robert Borgström and Florin Tobescu of Nexant, Inc., and have been reviewed by Virgil Musatescu, Senior Energy Advisor, USAID/Bucharest.

<sup>2</sup> ANRGN's Decision 616/June 10, 2002, published in the *Official Gazette* No. 408, June 24, 2002.

Appendix C: Comments on the Technical Code

During consultation early in 2002 with operating companies within the Romanian gas industry some difference of opinion as to how the Technical Code should be scoped and structured was apparent. These issues were addressed in the early part of this year and the attached note (Appendix A) produced to explain the proposed scope for the Technical Code and the reasoning behind that scope.

The comments made in April 2002 to ANRGN regarding a draft document produced in March are also included (Appendix B) to indicate the state of development of the code at that time.

Although Technical Code was published in June 2002, these market rules must be evolutionary. The comments (below) as well as our note to ANRGN (Appendix C) can serve as a framework for further modifications.

General Comments

USAID provided a suggested outline draft technical code to ANRGN in October 2001 and this was jointly developed over the succeeding two-month period into an effective format document. ANRGN have, as was intended, developed this format document into a draft Technical Code.

Detailed comments on the content of the current draft Technical Code are given in Appendix I against the specific sections of the document.

These confirm that the inconsistencies introduced earlier this year during the consultation process have been addressed and the current proposed Technical Code is now consistent, has a satisfactory structure and technical scope and will be an effective regulatory document.

There are areas where the document can be improved and the following suggestions are made in order to assist in future development of the Technical Code.

1. The requirement to obtain “licenses” and the licensing process is adequately covered in section 2.1. The same information is not provided for “authorizations”. Consideration should be given to developing sections 2.2 and 2.3 to define the need for “authorizations” and the process more clearly.
2. Section 2.4 provides information on the authorizing of personnel. It is not, however, clear in this section the extent to which those involved in various activities need to be authorized. Consideration should be given to defining the process of using authorized personnel in this document or referring clearly to a source for such information.
3. There is also some confusion in section 2.4 between the terms “license” and “authorization” which should be addressed.
4. Section 3.1 has two sub-sections (3.1.10 and 3.1.11), which contain a level of detail substantially greater than any other comparable sub-section and make this section both inconsistent and difficult to reference. It should be considered whether such a level of detail is required and, if it is, whether it may be best to move it to a reference section or annex.
5. The reference to a specific company in section 3.3 (SNTGN Transgaz SA) should be removed as this suggests a commitment from ANRGN and is inconsistent with the licensing process.
6. The wording of section 4.6 would appear to over-ride all the requirements of chapter 4 subject only to approval of the operator. The Code needs to ensure that

Appendix C: Comments on the Technical Code

this provision is avoids the possibility of sub-standard gas entering the public supply networks.

7. Chapter 5 could benefit by being more specific. As a minimum, the legislation referred to should be specified.
8. Chapter 6 needs to be reviewed for consistency and appropriateness. Some requirements may be better left to technical standards while those that are included in such a regulatory document need to be essential, specific and enforceable. They should also avoid being unnecessarily restrictive.
9. The structure of chapter 7 should be reconsidered. The need for separate sections 7.2, 7.3 and 7.4 is unclear.
10. The paragraph referencing in chapter 8 differs from the other chapters and should be altered for consistency.
11. Chapter 8 is fundamental to regulation and, while it covers all requirements, would benefit from a more detailed approach. The brief listing of requirements could be developed with some explanation and with more specific reference to standards, norms and regulations. The need for Section 8.3 should be re-considered.
12. Chapter 12 is not effectively defined and contains requirements in two unrelated areas. This chapter should be restricted to “Application of the Technical Code” and sections 12.2, 12.3 and 12.4 removed. These sections are, in effect, regulatory requirements and could be included in chapters 2 or 3. The development of standards and norms is, however, of sufficient importance in the regulatory area to merit a separate chapter and to be expanded to cover this area more comprehensively. For instance this could include the power of ANRGN to require a licensee to create, update or modify standards and procedures and the process for approval of these.

The above comments are made to facilitate future development of the Technical Code and do not affect the ability of the code to be used as an effective regulatory document except in two areas.

- ◆ The specific reference to SNTGN Transgaz SA in section 3.3 is not considered appropriate for a regulatory document.
- ◆ The wording for section 4.6 negates the remainder of this chapter.

#### Specific Comments

The following comments are made in relation to the value of the Technical Code to the Romanian gas market and not in relation to any specific western market. The comments are, however, based on western market experience and the relevant regulatory regulations applied to these markets.

#### Document Structure

The structure as defined by the “Contents” page is a substantial development from previous drafts showing that considerable thought has gone into producing a logical and easily referenced

Appendix C: Comments on the Technical Code structure – a requirement agreed with ANRGN at an early stage. In general it is quite easy to determine the purpose of each section and to access particular requirements through the contents page.

### Specific Chapters

#### Chapter 1 – Scope and Objectives

The previous draft contained a first chapter titled “General Framework” which was a development of the “Introduction” section included in Nexant’s outline draft. This has now been removed and part of it’s content included in a revised “Objectives” section and a new “Field of Application” section. Although this alters Nexant’s proposals for the introductory section it is a logical development and fits well with the code’s structure. The stated scope is in accordance with the proposed scope agreed in October last year in discussions between Nexant and ANRGN. It is particularly welcome that the statement “ANRGN issues the Technical Code” is included as this goes some way to addressing the conflicts earlier this year and confirming that this is a regulatory document issued and enforced by ANRGN.

“Objectives” have not been adequately defined in previous drafts and ANRGN have developed a logical, appropriate and well-defined set of objectives.

“Field of Application” is a new section that replaces part of the previous “General Framework” paragraph but which goes further in defining how the Code will be applied. It’s content is appropriate and useful.

#### Chapter 2 – Regulated Services and Activities in the Natural Gas Sector

This chapter is divided into four sections and explains the licensing regime and requirements within Romania. The content reflects the current legal and regulatory position within Romania. This is a logical division and assists with the ease of accessing this document.

##### Section 2.1 Licensed Operators and their activities

This section explains the authority to license and the scope of licensing. It provides an effective statement of the need to be licensed and the general requirements placed on licensees.

##### Section 2.2 Specific Authorizations

This section covers the need for authorizations as a separate issue to licenses. It is not altogether clear in what situations such authorizations are required and this needs to be explained at greater length.

- Do all licensees also require an “authorization”?
- Do licensees require authorizations to extend their business or to construct new or replacement plant?
  - Do only companies operating within an un-licensed area of the gas market (e.g. construction contractors and design agencies) require authorizations?

Appendix C: Comments on the Technical Code

The answer to these questions may be inferred from Chapter 3 but should be better explained here.

Section 2.3 Authorization & Verification of Companies

This section is intended to explain the process of authorization and verification. The content is however largely general and is more appropriate to section 3.2. There is a need to explain the authorization and verification process in general terms and this section should be reviewed.

Section 2.4 Authorization & Verification of Personnel

The aim of explaining the verification of personnel is met adequately in section 3.4. It would, however, be helpful to have an explanation of how the system operates. For instance –

Does a design agency need one qualified individual who will be responsible for the overall design or do all those involved at any stage of the design need to be authorized? Does a construction company need to have qualified supervision or do all workers require to be authorized?

There is also some confusion in this section between the terms “authorization” and “license”. This may be correct but needs explaining.

Chapter 3 – Requirements Imposed

This chapter is divided into design, construction and operation, which is a normal division for the engineering aspects of an installation. This chapter covers the specific regulatory requirements for each of these areas and is a logical development from Chapter 2 for this Technical Code document.

Section 3.1 Design

There are 6 pages and 13 defined paragraphs in this section, which makes quick reference more difficult than the rest of this Technical Code draft.

Part of the reason for this is the inclusion of a higher degree of detail than in other sections and it is considered that this could be significantly reduced. Paragraphs 3.1.10 and 3.1.11 contain considerable detail regarding the design process and it must be questioned whether such detail is appropriate for this document when there is no comparable detail for other Code areas. If it is, then moving the detail to an annex and having the paragraphs refer to the annex would make the document easier to reference. The remaining paragraphs within this section are relevant and appropriate.

Appendix C: Comments on the Technical Code

Section 3.2 Construction

Although this section also has 13 defined paragraphs it is only 2 pages and is therefore easy to read and reference. The content is all relevant and is appropriate to a Technical Code document and it appears to give a complete picture of regulatory requirements in the construction area.

Section 3.3 Operation

The content of this section is also relevant and appropriate and appears to cover regulatory issues effectively.

The section does, however, refer to a specific company in the text (i.e. SNTGN Transgaz SA), which one would not expect to see in a regulatory document. Transgaz is a licensed operator and as such are open to lose their license if they do not perform. Naming them in the Technical Rules suggests a permanence, which is inappropriate to a licensed operator.

Chapter 4 – Natural Gas Quality

This is a small chapter but it is appropriate that it should be a separate chapter. The requirements are reasonable and adequately cover quality requirements.

However, there is concern with the wording of paragraph 4.6. It would appear that this paragraph could over-ride all the other requirements subject only to the operator's approval. I assume that this refers to transportation of gas through independent pipeline systems and for specific uses (not including public distribution), which do not require "network quality" gas.

Chapter 5 – Natural Gas Metering

Again, a small chapter but appropriate. The wording is, however, loose and makes a number of general statements, which could benefit by reference to specific legislation. For instance 5.1 refers to "metrological legislation in force" which could be specified and 5.2 refers to "some specific requirements" with no reference or detail.

Chapter 6 – Materials and Equipment

This chapter specifies requirements for specific materials and items of equipment. It appears to cover the important issues and paragraph 6.1 covers all items not mentioned specifically, which is a reasonable way of dealing with this issue. There are a number of the material requirements, however, (6.6 and 6.7 for instance) that would probably be better left to an operational standard or code rather than a regulatory Technical Code

Specific comments –

Appendix C: Comments on the Technical Code

In paragraph 6.2 no standard is specified for steel pipe although further requirements are given in 6.11 and 6.12. Some standard (or standards) should be referred to as the risk from sub-standard pipe is very real.

In the west PE80 SDR 17 is used normally for low-pressure purposes which is the vast majority of PE pipe uses. Although specifying SDR11 may improve the security of the distribution system, it will cost more. This is also the case with PE100, which can be used in SDR17 form in the 2-4 bar pressure range.

Chapter 7 – System Development

This paragraph covers the requirements for system development and is a very important part of any regulatory document. It is sub divided into 4 short sections.

The structure of this chapter with 4 short sections 2 of which are single paragraphs is probably over organised. Sections 7.2, 7.3 and 7.4 could effectively be combined into one logical section. This would leave a first section dealing with “obligations” and a second section dealing with “planning practice”

Section 7.1 Obligations

This effectively confirms the requirement of operators to develop secure and safe systems and to provide short, medium and long term plans for system modernization and development.

This section effectively only covers transportation and distribution although storage is mentioned in the title and with regard to those permitted to operate, a paragraph, which is probably not relevant to this system development. It is however realistic to cover only transportation and distribution as it is only in these areas where the State, through the Regulator, needs to ensure satisfactory system development.

Section 7.2 Planning Scope

This section effectively develops 7.1 by specifying what must be considered with regard to system planning in transportation and distribution.

Section 7.3 Planning Objectives

This section also develops 7.1 by specifying the objectives of the planning process for transportation and distribution.

Section 7.4 Planning Elaboration

Covers the base data to be used in the planning process.

Chapter 8 – Compulsory Records

The structure of this section is different from other similar sections in that the subdivision of the sections (8.1, 8.2) use a), b), c), etc where the other chapters use numbering (8.1.1,

Appendix C: Comments on the Technical Code

8.1.2, etc). It would be consistent and make the chapter clearer if the structure was amended.

This is a very important chapter and details all the records which are required to ensure a safe and secure gas market and which are required for effective regulation of the market.

All the records are specified but in a rather brief manner.

The importance of this chapter is such that I would suggest the brief descriptions be extended with some explanation.

In addition the Performance Standards, Technical Norms and Regulations that are referred to should also be defined.<sup>3</sup>

Paragraph 8.1 should cover all the record requirements for Licensees. There should not, therefore, be a need for paragraph 8.3 unless there is a procedure for making additional regulations and this should then be specified.

#### Chapter 9 – Connections

Again, a very important regulatory section, which defines the rights of access to the gas, supply systems that, as the market opens, will become an important regulatory issue.

##### Section 9.1 Access

This provides the current legal rights for access to the supply systems and the legal basis and although brief is well stated.

##### Section 9.2 Access Denial

As above.

##### Section 9.3 Connection Process

This details the connection application process. Well structured and appropriate to this Technical Code.

#### Chapter 10 – Control and Inspection

This is again a very important regulatory chapter. It confirms the authority of ANRGN to carry out inspections and apply sanctions in support of its regulatory authority. It confirms how inspections will be arranged. The chapter is well presented and relevant.

#### Chapter 11 – Provision of Information

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<sup>3</sup> See Annex 3 “Relevant Legislation.”

Appendix C: Comments on the Technical Code

This chapter is divided into two sections covering information to be provided to ANRGN and information exchange between licensees. Information provision and exchange is an essential part of the regulatory process and as such the inclusion of this chapter in the technical code is very appropriate. This section is effective and clearly covers the requirements for information exchange.

Chapter 12 – Final Terms

This chapter sets some general requirements on licensees and others in the natural gas sector. It covers three areas.

12.1 Responsibility to comply with the code and monitor compliance.

12.2, 12.3, 12.4 Responsibility to develop and update standards (norms).

12.5, 12.6 Operational date for the Code and the requirements for modification. These are appropriate to the code and are adequately stated. They are however not closely related and their inclusion in the same section is inappropriate. If Chapter 12 was titled “Application of the Technical Code” the requirements in 12.1, 12.5 and 12.6 would be appropriate. There is no obvious section in which the content of 12.2, 12.3 and 12.4 could be placed (section 2.1 or section 3 are possibilities) but the development of standards and norms is probably of sufficient importance to develop a separate Chapter to cover this area and to specify the requirements in greater depth.

Annexes

Annex 1 - Glossary of Terms

It is appropriate to include a glossary of terms in order to standardize terminology and avoid misunderstanding. This appears to be very comprehensive list of terminology. It is assumed that the Romanian listing is in alphabetic order (or some other appropriate order) in order to simplify reference.

Annex 2 - Abbreviations

This is also an appropriate listing, which is more often placed towards the start of such a code document. It is however effective and appears to cover the relevant abbreviations. Otherwise the same comments as for the Glossary apply.

Annexes 3, 4 and 5 - Legislation and Standards

This is covered in Annexes 3, 4 and 5 according to the Contents page. This listing provides an essential reference to all businesses operating or considering operating in the natural gas market and avoids uncertainty as to appropriate legislation and standards in a gas market which is in the process of moving from a state function to a free market structure with very different legislative and control requirements.

Appendix C: Comments on the Technical Code

**Note on Structure of Technical Code (Feb 2002) \***

The proposed technical code for ANRGN was formatted as a result of discussions between the USAID consultant Nexant and ANRGN staff over a period during 2001. The following scope was agreed as appropriate for the structure of the proposed document.

- It would be a mandatory document.
- It would be structured as a relatively short reference document.
- It would specify technical requirements, which may be enshrined in law or may be regulatory requirements specified by ANRGN.
- It would refer to the standards that must be followed in order to achieve those requirements.
- In no way would the document attempt to take the place of such standards as this would make it inflexible, difficult to reference and over complicated.
- It would contain a listing of relevant legislation and standards and a bibliography of terms.

This document is the technical framework on which the future gas industry in Romania will be built. The production of a cumbersome, inflexible document will result in a cumbersome, inflexible industry in a world where technological development requires that industry react to change very quickly. The foregoing structure should not be changed; moreover:

1. ANRGN has an obligation to make its requirements clear to all those operating in the gas industry. This requires the production of an easily referenced document, which covers all these requirements.
2. The proper place for procedures, codes of practice and standards is in specialist documents produced, updated and reviewed by organizations specialist in these areas. These may be adopted by ANRGN or by other national bodies but including them in the ANRGN Technical Code would be very inappropriate.
3. It is appropriate for organizations operating in the gas industry to provide the major input in the formulation of procedures, codes of practice and standards and to ensure their updating and review. They are the specialists in these particular areas.

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\* Prepared by William Cochran (*Gasconsult*), under contract to Nexant, Inc., for distribution to ANRGN and other members of the Project Team.

Appendix C: Comments on the Technical Code

4. It is not appropriate for those operating in the gas industry to formulate a document that ANRGN will apply in regulating these same companies. They should be consulted but it is ANRGN's document. In the area of regulation ANRGN is the specialist.
5. Where there is a need to specify technical requirements in the Code and no current document exists this can be handled from a regulatory point of view simply by requiring that the operation is carried out according to safe and environmentally acceptable practice or that an acceptable (international) standard is adopted. If thought necessary ANRGN can require that such practices are submitted for approval and as most of these processes have already been carried out over many years procedures are likely to be available.

The creation of new standards and revised standards can easily be covered by revisions of the Technical Code. Were the code to contain excessive technical data it would not be easy to revise and as it would then be inflexible so also would the industry itself.



**USAID GAS REGULATORY &  
RESTRUCTURING  
ASSISTANCE PROJECT IN  
ROMANIA**



**6<sup>th</sup> KEY ISSUES SEMINAR**

**ACHIEVEMENTS TOWARD A  
FREE MARKET FOR NATURAL GAS  
IN ROMANIA**

Hotel Continental, Bucharest

September 19, 2002

**AGENDA**

- 08:30 Registration (coffee)
- 09:00 Call to Order – Robert Borgström (Nexant), Chief of Party  
Introductions  
Representative of the Ministry of Industry & Resources  
Dan Pantilie, President, ANRGN
- 09:30 Overview of Project & Lessons Learned  
Marcela Oltean, ANRGN  
Rotar Dumitru, Romgaz  
Carmen Perniu, ANRGN  
Gheorghe Stefan, Transgaz
- 10:20 Panel #1 – Commercial Code  
Mihai Goage, ANRGN  
Robert Borgström, Nexant
- 11:00 Break (coffee)
- 11:30 Panel #2 – Technical Code  
Vasile Florea, ANRGN  
Vlad Pavlovschi, Transgaz  
William Cochran, GasConsult
- 12:15 Panel #3 – Privatization, the Next Steps  
Constantin Nedelcu, Privatization Office, MIR  
Marioara Neagu, Distrigaz-Sud
- 12:50 Concluding Remarks - Virgil Musatescu, USAID  
Presentation of Certificates of Recognition to the Project Team
- 13:30 Adjourn to a Buffet Luncheon



USAID GAS REGULATORY &  
RESTRUCTURING  
ASSISTANCE PROJECT IN  
ROMANIA



MEMORANDUM

July 10, 2002

To: Mr. Fred Kirschstein, USAID/Bucharest &  
Dr. Virgil Musatescu, USAID/Bucharest

From: Robert Borgström

This memorandum responds to your request for further information about Order 199 of the Ministry of Industry & Resources (MIR).

- 1) The objective of MIR Order 199 (June 19, 2001) was that Romanian producers should make sufficient injections into underground storage to meet prospective winter needs. A further provision of the Order permits those producers to sell excess production – i.e. amounts after the storage requirements are met – to “eligible” consumers on the basis of “frame contracts” issued by ANRGN. At that time there were NO private sector gas producers in Romania and Order 199 applied only to the state-owned entities.
- 2) AMRONCO, RAMCO and WINTERSALL each have business relationships with ROMGAZ; they have concessions for natural gas and intend to produce natural gas for sale in the nearest future. We understand that these companies have requested of MIR that there be a new governmental decision NOT TO INVALIDATE Order 199, but to confirm its applicability to these private sector companies.

In addition to the applicability of Order 199, we understand that the companies in question are concerned with confirming the applicability of Article 27d of the Petroleum Law (December 28, 1995), which provides that companies have the right to make sales, including exports, of gas that is not sold to the Romanian State.

- 3) Our view of Order 199 is that a further confirming order may not be necessary, however, it may be the view of AMRONCO, RAMCO and WINTERSALL that they should have this additional Order as insurance against future governmental decisions that might frame an intervention into their business activities. In the recent past, the government has issued orders that have “intervened” in the operation of the gas producers. For example:

Appendix E  
Memorandum Concerning the  
Ministry of Industry & Trade's Order 199

- Order 85/April 2, 2001 – which contravened the concept of price negotiation and set up a “market basket” rate for natural gas;
  - Order 153/May 14, 2002 – which directed the gas producers, principally state-owned ROMGAZ and PETROM, to place certain volumes of gas into storage for ultimate delivery to the non-eligible customers; and
  - The “de facto” confiscation of contracted natural gas to meet “non-eligible” customer needs during December 2001.
- 
- Order 199 is advantageous to domestic producers in that a “negotiated price” may yield higher revenues than the current “net back” price that domestic producers receive for “non-eligible” sales.

Currently the price of natural gas to consumers is set at \$82.50 per thousand cubic meters including a transportation cost, within Romania, of \$10. If we assume that the border price of imports is \$110, a recent contract price with Gazprom, and that imports account for 20% of demand, it follows that the netback price to domestic producers is \$63.13. -- If only 75% of the receivables are actually collected (this assumption roughly reflects the current problem of collections for natural gas delivered to state-owned power generators) – and with the import price being paid “up front,” the netback to domestic producers is reduced to only \$40.47.

Under Order 199, a domestic producer could offer gas for sale at between \$63.13 and \$72.50 -- i.e. \$82.50 less \$10 for transportation – a price that is less than either imports or the ANRGN approved “market basket,” but one that provides him with greater revenue than he would otherwise get from “regulated” sales to the state companies.

- 4) It is our understanding that the request for a “new Order” is UNDER DISCUSSION but we have found no information about the status of any specific Order being prepared in response to that request.

#### Definitions

These “frame contracts” specify the conditions of sale, but the parties are free to negotiate the price (exclusive of transportation, storage and distribution charges, as applicable, which are regulated by ANRGN).

There are currently 46 “eligible” customers in Romania; they are large volume consumers who have been authorized by ANRGN to purchase natural gas from whatever source they chose. The current objective of MIR and ANRGN is to allow up free market transactions for up to 25% of the total gas consumption in Romania.

“Non-eligible” customers must purchase gas from licensed distribution companies in Romania at prices, which are set by ANRGN. Currently this price is \$82.50 per McM and is based upon a weighted average of import and domestic costs.

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Please let Florin Tobescu or me know if you wish to discuss and/or require additional information. Our office number is 210-1564. My mobile is: 093-053-893. Florin's mobile is: 092-766-855.

Robert Borgström  
Project Manager

Cc: Florin Tobescu (Nexant/Bucharest)

**A-Legislative changes**

NO.	PIECE OF LEGISLATION AND TITLE	PUBLISHED- OFFICIAL GAZETTE (MOF)	<u>Observations</u>
1.	Order 153/2002 on adopting the necessary measures for the period of injection cycle 2002 into natural gas underground storages, for ensuring the quantities meant to complete the internal sources in the structure of natural gas consumption for the winter 2002-2003	487/July 8, 2002 issued by MIR	Internal producers, "Romgaz" S.A. – Medias and "Petrom" – S.A. Bucuresti are obliged to ensure monthly and cumulated on injection cycle, natural gas quantities meant to underground storage processes, according to the annex at the present order
2.	Decision 636/2002 on approving Commercial Rules regarding Natural Gas Market	506/July 12, 2002- issued by ANRGN	Commercial Rules regarding Natural Gas Market, foreseen in the appendix of the decision are approved
3.	Decision 637/2002 on modifying and completing Natural Gas Transportation Framework-Contract	506/July 12, 2002- issued by ANRGN	Natural Gas Transportation Framework-Contract, approved by Decision of the president of Regulatory National Authority in Natural Gas Sector no. 187/2001, published in Monitorul Oficial no. 595/November 21, 2001, is modified and completed
4.	Decision 638/2002 on modifying and completing Natural Gas Distribution Framework-Contract	506/July 12, 2002- issued by ANRGN	Natural Gas Distribution Framework-Contract, approved by Decision of the president of Regulatory National Authority in Natural Gas Sector no. 533/2001, published in Monitorul Oficial no. 698/November 2, 2001, is modified and completed

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5.	Decision 654/2002 concerning approval for Criteria and methods for establishing regulated tariffs and prices in natural gas sector	506/July 12, 2002- issued by ANRGN	Criteria and methods for establishing regulated tariffs and prices in natural gas sector, foreseen in the appendix part at the present decision, are approved
6.	Decision 656/2002 on approval the Regulation on measuring quantities of natural gas dealt on the whole sale market	506/July 12, 2002- issued by ANRGN	Regulation on measuring quantities of natural gas dealt f on the whole sale market is approved
7.	Decision 657/2002 on approval the Regulation on measuring quantities of natural gas dealt for captive consumers	506/July 12, 2002- issued by ANRGN	Regulation on measuring quantities of natural gas dealt for captive consumers is approved
8.	Governmental Decision 655/2002 for the approval of the Development Strategy of the Oil Industry between 2001-2010	512/July 16, 2002- issued by Government of Romania	Main issues concerning the development of the oil industry as exploration, production, refinery activity, petrochemicals, infrastructure and distribution were submitted for the Government approval
9.	Governmental Decision 848/2002 for the approval of the Winter Program for the Energy sector during the period Oct 2002- Mar 2003	624/August 23, 2002- issued by Government of Romania	Necessary measures for energy supply during the winter period were taken in order to meet the demand
10.	Governmental Decision 857/2002 for the reorganization process of "Hidroelectrica" - S.A.	632/August 27, 2002- issued by Government of Romania	Eight joint-stock companies have been established through the Hidroelectrica's reorganization.

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11.	Decision 800/2002 for modifying the framework contracts for natural gas supplying to captive consumers	641/August 29, 2002- issued by ANRGN	The delay penalties foreseen at art. 14 paragraph (1) a) in framework contracts for natural gas supplying to residential consumers – annex no. 1 – and art. 12 paragraph (1) a) in framework contracts for natural gas supplying to industrial, commercial consumers and those in central heating system – annexes nos. 2-4 - will be equal to those used for nonpaying state budget duties, respectively 0,07% for each day that goes beyond the legal payment term.
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During the reported period the prices and tariffs for natural gas remained the same as previous period, such as :

Starting March 1, 2002 through an order issued by the National Authority for Gas Sector Regulation a social tariff is introduced for persons who comply with the provisions of Law 416/2001 (low income persons) as follows:

A- For a monthly consumption of less than 100 m<sup>3</sup> (and respectively 300 m<sup>3</sup> ) the price is 2,063,531ROL/1000 m<sup>3</sup> which is the equivalent of 61.87USD/1000 m<sup>3</sup> ;

B- For the natural gas quantity consumed beyond the levels mentioned above the regulated price will be applied foreseen at Art. 1 b) in Order of the President of National Regulatory Authority in Natural Gas Sector and the President of National Agency for Mineral Resources no. 865/195/2001 concerning the approval of prices and establishment of regulated tariff in natural gas sector:

		ROL/1000cm	USD/1000cm	
Captive Customers (Merchant Service)	Connected via Transgaz	2,293,146	68.76	
	Connected via Distrigaz-Nord or Distrigaz-Sud	2,751,375	82.50	
Transportation		230,115	6.90	
Underground Storage		727,030	21,80	
Distribution Tariff	Captive Customers	Connected via Transgaz	116,725	3.50
		Connected via Distrigaz-Nord Or Distrigaz-Sud	574,954	17.24
	Eligible Customers	458,229	13.74	

(the above prices and tariffs are calculated at ROL/S exchange rate 33,350 and do not include VAT)

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**US Dollar to Romanian Lei Conversion Rate**

	USD = ROL
July 31, 2002	32,888
August 30, 2002	33,215
September 11, 2002	33,070