GOVERNMENT NOTICE NO. 40

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) ACT

(CAP. 50:03)

LIQUID FUELS AND GAS (PRODUCTION AND SUPPLY) (STRATEGIC FUEL RESERVE STORAGE) REGULATIONS, 2018

IN EXERCISE of the powers conferred by section 46 of the Liquid Fuels and Gas (Production and Supply) Act, I, AGGREY MASI, Minister of Natural Resources, Energy and Mining, in consultation with the Authority, make the following Regulations—

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PART I—PRELIMINARY

Citation

1. These Regulations may be cited as the Liquid Fuels and Gas (Production and Supply) (Strategic Fuel Reserve Storage) Regulations, 2018.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"Agent" means the National Oil Company of Malawi Limited, a State owned enterprise incorporated on 14th December, 2010;

"Authority" has the meaning ascribed to it under the Act; and

"demurrage" means penalty assessed against any party responsible for delay in loading or offloading of the liquid fuels or gas.

Application

3. These Regulations shall apply to the following liquid fuels and gas—

(*a*) gasoline (petrol);

(*b*) automotive gasoil (diesel);

(*c*) illuminating kerosene; and

(*d*) any other liquid fuel or gas product as may be determined, from time to time, by the Minister by notice published in the *Gazette*.

PART IV—OBJECTIVE AND MAINTENANCE OF STRATEGIC FUEL RESERVE STORAGE

Objectives of the strategic fuel reserve storage

4. The objectives of the strategic fuel reserve storage shall be to—

(*a*) make provision for reserves of liquid fuels products in physical stock in selected locations in Malawi;

(*b*) ensure continuity of supply of liquid fuels and gas, at all times, in normal conditions and in case of national or international liquid fuels and gas supply chain disruption or shortage of liquid fuels and gas products;

(*c*) respond to incidents such as natural disasters or other interruptions of the liquid fuels and gas distribution in the country;

(*d*) stabilize domestic prices of liquid fuels and gas; and

(*e*) maintain quality and value of stock.

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5. The strategic fuel reserve storage shall be maintained at a liquid fuels and gas product holding capacity of not less than sixty days of continuous consumption without replenishing, in accordance with regulation 116 of the Liquid Fuels and Gas (Production and Supply) Regulations.

PART III—RESPONSIBILITIES OF THE AGENT

Management of strategic fuel reserve storage

6.—(1) The Minister shall appoint an Agent, to establish and manage the strategic fuel reserve storage.

(2) In accordance with subregulation (1), the Agent shall be responsible for the installation, control, management, monitoring and supervision of the smooth operations of the strategic fuel reserve storage facilities and ensure compliance with these Regulations.

(3) The strategic fuel reserve storage shall be maintained at various

strategic locations in Malawi, in storage facilities owned or rented by the Agent.

(4) The strategic fuel reserve storage referred to in this Regulation may be located under or above ground, depending on the requirements of the location.

(5) Where the strategic fuel reserve storage is located near a main railway line, the Agent shall ensure that there is a rail siding connected to the main rail line to allow receipts or dispatches of bulk fuel by rail tank wagons.

Testing and inspection

7.—(1) The Agent shall—

(*a*) on every occasion at which a strategic fuel reserve storage installation is used, and during its operation at regular intervals or any other period as may, on good grounds, be shown by the Agent, subject the installation to tests, inspections and control as may be necessary in order to determine whether the liquid fuel installation is in a proper condition and whether it complies with these Regulations, the Act or any other written law;

(*b*) keep and maintain records containing particulars of the times and the manner in which the tests, inspections and control have been carried out; and

(*c*) in the planning of new installations and equipment and the modification of existing equipment, maintain a safety level concurrent with technological development in accordance with liquid fuels industry good practices and international standards in the management of oil installations.

(2) For the purposes of efficient and effective management of the strategic fuel reserve storage, the Agent shall—

(*a*) prepare, maintain and report to the Authority, on daily basis, stock position reports stipulating the physical quantity held in all designated facilities;

(*b*) prepare and submit reports of the strategic fuel reserves storage operations on a monthly basis or such other intervals as determined by the Authority, indicating procurement plans and stock movement or any other report that may be required by the Authority; and

(*c*) comply to set operating standards and procedures stipulated by the Authority for fuel storage installations, and be subjected to inspections by the Authority for compliance to standard operating procedures.

PART IV—RELEASE AND REPLENISHMENT OF THE STRATEGIC FUEL RESERVE STORAGE

Release of stocks in strategic fuel reserve storage

8.—(1) Subject to regulation 4, the Agent shall release strategic fuel stock—

(*a*) every month, sufficient to meet a proportion of the monthly market demand, as agreed and approved by the Authority;

(*b*) in a case of emergency; or

(*c*) pursuant to an order, in writing, issued by the Minister.

(2) A holder of a Wholesale Licence shall purchase fuel requirements from the strategic fuel reserve storage, at least once every month, as determined by the Authority, and at prices approved by the Authority, from time to time.

(3) In order to ensure that the strategic fuel reserve storage facilities are effectively used to avoid demurrage or delays, the Agent shall notify the Authority of strategic fuel reserve procurement plan and release schedules.

(4) The Agent shall submit a schedule of strategic fuel reserve storage product releases and replenishments to the Authority and the Minister at times determined by the Authority, and any strategic fuel reserve products released under this part shall immediately be replenished by the Agent.

(5) For the purpose of ensuring transparency, proper coordination and assurance of release of the strategic fuel reserve storage products into the market, the Agent shall not cause or be a cause of temporary or any shortage of liquid fuel and gas products in the local market, and the releases shall be done in close collaboration with the Authority.

(6) The strategic fuel reserve storage quantity and products released into the local market or sold at a price determined by the Authority to a Wholesale Licensee shall accordingly be reduced from, and be a substitute of, the quantity and products to be imported under the existing procurement plans.

(7) Where there is a bilateral arrangement between a foreign government and the Government of Malawi for the supply of liquid fuel and gas products stock at a relatively lower cost, the bilateral arrangements shall take precedence over any existing supply procurement plan:

Provided that—

(*a*) Government shall consult the Agent on the prospective bilateral arrangements and take into account the existing supply procurement plans; and

(*b*) the Agent may still procure under the existing supply procurement plans, if the Agent is bound by contract to procure under those plans.

Price of liquid fuels and gas to the final consumer

9. The Authority shall determine the price of the liquid fuels or gas to the final consumer by taking into account, *inter alia*—

(*a*) the value of the product in the reference to spot market price or ruling free on board price plus the supplier's ex-tank margins;

(*b*) the cost of haulage from the ports of discharge into Malawi, inclusive of the inland shipping;

(*c*) the weighted cost of storage in the strategic fuel reserve storage facilities;

(*d*) the weighted cost of fuel in the strategic fuel reserve storage facilities;

(*e*) the sum of weighted costs for actual handling, depot through put costs, goods in transit insurance and transit losses;

(*f*) government taxes and levies imposed on importation, transportation or sale of the product; and

(*g*) the licensee's approved mark-up.

PART V—FUNDING OF THE STRATEGIC FUEL RESERVE STORAGE

Funding stock of strategic fuel reserve

10.—(1) The Agent shall, upon approval by the Minister, recommend the initial strategic stock volumes of the strategic fuel reserve storage.

(2) Government shall adequately fund the strategic fuel reserve storage.

(3) The initial stock of strategic fuel reserve storage shall be imported through financial arrangements built in the liquid fuels pricing structure.

(4) The strategic fuel reserve storage shall be financed by sums of money collected from a liquid fuels levy imposed by the Minister under section 38 of the Act.

(5) The initial strategic stock shall be based on the consumption to cover at least sixty days of the country's liquid fuels and gas products demand.

(6) The procurement of the strategic fuel reserve storage stock shall be done through international competitive bidding or through bilateral arrangements.

(7) In all cases, the procurement of liquid fuels and gas shall be handled so as to achieve efficiency in the procurement and compliance with the Act and other written laws.

(8) In order to cover additional days of consumption, the Agent shall, recommend to the Authority for approval, increasing and the build-up of the existing stock of liquid fuels and gas.

(9) The funding for the strategic fuel reserve storage shall include all the costs related to the procurement, infrastructure development, operation and management of strategic fuel reserve storage facilities.

PART VI—PENALTIES

General penalties

11. A person who contravenes any provision of these Regulations commits an offence and is liable, on conviction, to imprisonment for a term of three months.

PART VII—GENERAL PROVISIONS

Authority to supplement procedures

12. Where procedures are not expressly provided for in these Regulations, the Authority may do whatever is necessary, reasonable and permitted by applicable law to enable it to effectively and completely deal with the matter before it.

Dated this 11th day of June, 2018.

A. MASI
Minister of Natural Resources, Energy and the Mining

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