

AGP/Leg/2023-24/008  
30.10.2023

The Secretary  
 Petroleum and Natural Gas Regulatory Board  
 1<sup>st</sup> Floor, World Trade Centre  
 Babar Road  
 New Delhi – 110001

**Ref: Public Notices dated 06.10.2023 of :**

(a) “Application for laying, building and operating a dedicated pipeline for natural gas from ONGC’s Gamnewala GCS Jaisalmer, Rajasthan to M/s Exxaro Ceramic Limited, Jaisalmer, Rajasthan under Regulation 19(2) of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008”, and

(b) Application for laying, building and operating a dedicated pipeline for natural gas from ONGC’s Gamnewala GCS Jaisalmer, Rajasthan to M/s Sten Glass and Ceramics Pvt. Ltd., Jaisalmer, Rajasthan under Regulation 19(2) of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008

Respected Madam,

Preliminary Submissions:

- 1) We, AGP CGD India Pvt. Ltd. (“AGP CGD”), are the authorised entity for the geographical area of Barmer, Jaisalmer & Jodhpur Districts (GA 9.55). AGP CGD has marketing exclusivity for a period of 96 months and infrastructure exclusivity for a period of 300 months. We would humbly like to mention that the above referred Public Notices dated 06.10.2023 issued by the Hon’ble Board is outside the statutory framework of PNGRB Act and applicable regulations.
- 2) The proposals are clearly being made by end-user consumers of gas who have been allocated gas by ONGC, located within the Jaisalmer District authorised to AGP CGD. The proposals by a consumer for laying a pipeline for itself is not in the nature of a “dedicated pipeline” but a “captive pipeline” as that line is being built by a consumer for its own captive use. The concept of dedicated pipeline is that an entity which is otherwise authorised to either lay build operate or expand a natural gas pipeline or CGD network, lays a “dedicated” or “separate” or “specific” pipeline for a particular consumer to meet the consumers specific requirements. Unlike the Electricity Act, 2003

(Refer s.9 Electricity Act and Rule 22 Electricity Rules) under which concept of “captive transmission lines” or “captive power plants” is recognised and specifically regulated, the PNGRB Act and regulations thereunder do not even contemplate the concept of “captive” pipelines being developed by consumers for their own requirements. This is clearly to ensure development of natural gas pipelines only by regulated entities and to guard against infructuous investments. If the Hon’ble Board allows for consumers to, at their own choice, lay their own captive pipelines, it will render the authorisations for not only CGD network development but also common carrier or contract carrier natural gas pipelines unviable. It will also result in multiple infrastructure being developed and result in infructuous investments by authorised entities. Our objections are elaborated in our submissions hereinbelow.

- 3) Without prejudice to the below mentioned detailed submissions, we would also like to bring to your attention that the validity of this relevant regulation and guidelines is under challenge before Division Bench of Delhi High Court in the matter of Gujarat State Petronet Limited vs PNGRB (W.P. (C) 5428/2021 and accordingly we request the Board not to proceed with this Public Notice.
- 4) **Under s. 11 PNGRB Act, a customers/consumers cannot establish captive natural gas pipelines. Any such approval/authorisation will be void and ultra vires PNGRB Act.**
  - a. The Hon’ble Supreme Court of India in the case of *PNGRB v. IGL (2015)9SCC209*, has held that s.11 PNGRB Act deals with the powers and functions of the Hon’ble Board and other provisions, including the regulation making power under s.61 PNGRB Act, have to yield to it and Section 61 PNGRB Act enables the Hon’ble Board to frame regulations to carry out the purpose of the PNGRB Act and certain specific aspects have been mentioned therein. Section 61 has to be read in the context of the statutory scheme. The regulatory provisions, needless to say, are to be read and applied keeping in view the nature and textual contest of the enactment as that is the source of power (*See para 28 read with Para 44 read with Para 53 of the Supreme Court Judgement*).
  - b. S. 11 PNGRB Act restricts the Board to authorise consumers to lay their own captive natural gas pipelines. Section 11(c) PNGRB Act only vests the function with PNGRB to authorise entities to: (i) lay build, operate or expand a common carrier or contract carrier; and (ii) lay build, operate or expand city or local natural gas distribution network.
  - c. In relation to consumers, s.11(a) PNGRB Act stipulates that the Board can protect the interest of consumers by fostering fair trade and competition amongst the entities. This does not allow consumers to themselves lay captive natural gas pipelines for their own use.

- d. In fact as pointed out by the Hon'ble Supreme Court (while upholding the Delhi High Court judgement and quoting it with approval), Clause (a) of s.11 *“while prescribing protection of interest of consumers limits the same to, by fostering fair trade and competition amongst entities engaged in distributing, dealing, transporting, marketing gas. The function of the Board thereunder is of regulating the inter se relationship of entities under the Act and not to regulate/control the relationship between the entities under the Act and the consumers.”* (See Para 27 of Supreme Court Judgement).
- e. The other power to protect consumer interest is under s.25 PNGRB Act in which PNGRB can admit and look into complaints by any person on matters relating to entities or between entities on any manner arising out of the provisions of this Act, which includes “restrictive trade practices” being adopted by entities. S. 2(z) PNGRB Act defines “restrictive trade practice” to mean *“a trade practice which has or may have the effect of preventing, distorting or restricting competition and in particular which... (ii) tends to bring about manipulation of prices, or conditions of delivery or to effect the flow of supplies in the market relating to petroleum, petroleum products or natural gas or services in such manner as to impose on the consumers unjustified costs or restrictions.”*
- f. None of these powers/functions allow to authorise consumers to lay, operate and maintain their own captive natural gas pipelines.
- g. The very concept of captive natural gas pipelines does not exist within the framework of the PNGRB Act.
- 5) **Hon'ble Board's public notices and Exarro and Sten Glass proposals are ultra vires PNGRB Act:**
- a) Under the statutory framework established by the PNGRB Act, 2006 and regulations, the transportation of natural gas to a customer is completely regulated and it is not permissible for a customer/consumer to lay its own natural gas transmission pipeline. The PNGRB Act does not contemplate “captive” transmission lines being laid by consumers for their own captive use. It only enables authorised entities (whether for CGD network or common carrier or contract carrier) to lay pipelines for specific consumers for meeting their requirements of end use of gas and not resale.
- b) There are three specific types of pipelines recognised by the PNGRB Act for transportation of natural gas to customers:



- i. The first is the a transportation pipeline laid by an entity for allowing transportation of natural gas by and to more than one entity which is notified as a common carrier by the PNGRB. This carries the obligation of providing “non-discriminatory open access” to any customer who would want to transport gas using the pipeline. An exception to the obligation of a common carrier pipeline from providing non-discriminatory open access in such pipelines is if a pipeline is laid to supply natural gas “to a specific consumer”. s.2(j) PNGRB Act, defines “common carrier”, as “*such pipelines for transportation of... natural gas by more than one entity as the Board may declare or authorise from time to time on a nondiscriminatory open access basis under sub-section (3) of section 20, but does not include pipelines laid to supply – (i)..natural gas to a specific consumer...*”
  - ii. The second category of pipelines providing transportation of gas to consumer is that of “contract carrier” where a pipeline can provide transportation of gas for more than one entity on firm contracts that have a period of one year and are authorised as contract carrier. S. 2(m) PNGRB Act defines “contract carrier” to mean “*such pipelines for transportation of ... natural gas by more than one entity pursuant to firm contracts for at least one year as may be declared or authorised by the Board from time to time....*”
- c) The usual practice of the Hon’ble Board has been to usually authorise a pipeline as both a “common carrier or contract carrier” and these entities have to ensure that a certain part of the pipeline capacity is available for access on non discriminatory open access basis and at the same time a certain amount of capacity can be offered on contract basis of firm contracts of one year or more. Although the definitions do not provide any limitation on transportation pressure, it is clear that pipelines that are authroised as common carrier and/or contract carrier would operate and transport gas for consumers at high pressure in light of the clear definition of “city or local natural gas distribution network”.
- d) The category of transportation of natural gas to premises of consumers at low pressure within identified geographical areas, which is undertaken through “city or local natural gas distribution network”. S. 2(j) PNGRB Act defines “city or local natural gas distribution network” to mean. “*an interconnected network of gas pipelines and the associated equipment used for transporting natural gas from a bulk supply high pressure transmission main to the medium pressure distribution grid and subsequently to the service pipes supplying natural gas to domestic, industrial or commercial premises and CNG stations situated in a specified geographical area. Explanation :-For the purposes of this clause, the expressions "high pressure" and "medium pressure" shall mean such pressure as the Central Government may, by notification, specify to be high pressure or, as the case may be, medium pressure.*”

- e) From the details of the proposal disclosed in the above referred public notices, it is clear that the proposed pipelines are low pressure natural gas transportation pipeline having normal operating pressure of only 4 kg/Cm<sup>2</sup> g (which is 3.9 bar). Under Regulation 2(p) of the CGD T4S Regulations, this pressure falls under the pressure covered by the “secondary network” of a CGD network. Consequently, since the pipeline is proposed to be developed within an area demarcated and authorised to AGP CGD for development, laying, building, operating, maintaining or expanding a CGD network namely the authorised geographical area of Barmer, Jaisalmer and Jodhpur (GA ID 9.55), the proposed pipeline can be laid only by AGP CGD, which is the authorised entity that has been vested with the infrastructure exclusivity to lay, build, operate, maintain or expand CGD network within the said authorised area. The public notices and the proposals are in violation of the statutory framework established by the PNGRB Act and the authorisation issued to AGP CGD and the rights vested with AGP CGD.
- f) Under s.16 PNGRB Act it is clearly stipulated that no entity can lay, build, operate, maintain or expand a common carrier or contract carrier or city or local natural gas distribution network without obtaining a prior *authorisation* from the Hon’ble Board. The framework governing the award of the authorisations is governed by the provisions of s.16 to s.19 PNGRB Act. The declaration of a pipeline or a city or local natural gas distribution network as a common carrier or contract carrier is governed by s.20 PNGRB Act. The same was upheld by Hon’ble Supreme Court in the matter of Adani Gas Limited vs Union of India & Ors (SLP (C) No. 28192-28193 of 2018).
- g) Furthermore, entities authorised to develop CGD networks are vested with infrastructure and marketing exclusivity in terms of their authorisation and CGD Authorisation Regulations and CGD Exclusivity Regulations. There is no exception or carve out to the infrastructure exclusivity of laying gas transportation pipeline that would enable an unauthorised person such as an end consumer to lay a pipeline to its own premises.
- h) There is no statutory framework that would enable a consumer to lay its own low pressure natural gas transmission pipeline within a geographical area demarcated and authorised for development of a CGD network. In fact Regulation 3 of the CGD Authorisation Regulations, clearly vest the authorised CGD entity with the obligation and responsibility to design the local distribution network within its authorised area in a manner so as to ensure that consumers requiring natural gas upto 50,000 SCMD are supplied natural gas through the CGD network and customers having a requirement of natural gas between 50,000 SCMD to 1,00,000 SCMD are supplied natural gas, at the option of the consumer, either through the CGD network developed or through a separate natural gas pipeline. It should be noted that there is no concept or scope for the consumer laying its own natural gas pipeline contemplated under the statutory framework.

- i) The statutory scheme therefore makes it clear that : (i) transportation of natural gas is a regulated activity and cannot be undertaken without authorisation of either common carrier or contract carrier or CGD Network, (ii) a consumer cannot lay any transportation pipeline, and (iii) after an area is demarcated as a geographical area for development of CGD network, low pressure distribution network to premises of consumer can be developed only by the authorised CGD entity.
- j) In light of the clear statutory framework, the proposal by a consumer such as Exarro to itself lay a pipeline within the geographical area demarcated and authorised to an entity for development of CGD network is ultra vires the framework of PNGRB Act and outside the jurisdiction of this Hon'ble Board.
- k) The Public Notice issued is *ultra vires* the statutory framework of the PNGRB Act, NGPL Authorisation Regulations read with the CGD Authorisation Regulations CGD Exclusivity Regulations and CGD T4S Regulations.
- 6) ***Proposals Not Covered under Reg. 19(2) NGPL Authorisation Regulations. Public Notices and Proposal are ultra vires NGPL Authorisation Regulations:***
- a) The present public notices have been issued under the NGPL Authorisation Regulations. However, Regulation 3 NGPL Authorisation Regulations, clearly stipulates that the NGPL Authorisation Regulation would apply only to: (i) an “entity”, (ii) an entity which is laying, building or expanding or which proposes to lay, build, operate or expand a “natural gas pipeline” and (iii) to an entity which proposes or is directed by the Hon'ble Board to convert a dedicated pipeline for supply of natural gas to a specific consumer into a natural gas pipeline.
- b) Exarro and Sten Glass are not “entities” as defined in s.2(p) PNGRB Act but are admittedly, as per the proposals, only consumers who have obtained allocation of gas from ONGC. Under s.2(p) PNGRB Act in order for a company to be considered as an “entity” it has to be engaged in or intending to engage in transportation, distribution, marketing import or export of natural gas including laying of pipelines for transportation of natural gas. This clearly indicates that the entity should either be already engaged or intending to engage, *inter alia*, in transportation including laying of pipelines for transportation of natural gas. This does not contemplate an end user laying a pipeline for itself and its own purposes as that will not fall within the scope of a company engaged or intending to be engaged in transportation or laying of natural gas pipelines. Allowing customers to themselves lay pipelines for their own captive consumption is not the intent or scope of the term “entity” under the PNGRB Act, 2006.
- c) In fact the PNGRB Act specifically uses the term “consumer” to refer to customers and end users, and distinct term “entity” to refer to companies/persons undertaking laying of natural gas pipelines and providing natural gas transmission services. Continuing this distinction between “consumer” and “entity” from the PNGRB Act, the PNGRB NGP Authorising Regulations clearly identify dedicated pipelines to be laid to transport gas “to a specific customer”. The two concepts cannot be used

interchangeably and a specific customer cannot be considered to be an “entity” for undertaking captive transportation for itself.

- d) The proposals provided by the said public notices clearly show that Exarro and Sten Glass are companies that are having or propose to have factories in Jaisalmer District and are only intending to lay a pipeline to their respective factories where gas will be consumed by themselves. Therefore, Exarro and Sten Glass are factually consumers of natural gas. The publicly available documents namely the Memorandum of Association of Exarro and Sten Glass also show that their main objects do not contemplate nor permit these companies to undertake the business of transportation of natural gas. Therefore, clearly Exarro and Sten Glass are not “engaged in or intending to be engaged in” transportation of natural gas but are “consumers”.
- e) Even if it is to be assumed that Exarro and Sten Glass can be considered as “entities”, the NGPL Authorisation Regulations are not applicable as they are not intending to lay, build, operate or expand a “natural gas pipeline”. Regulation 2(1)(f) NGPL Authorisation Regulation defined “natural gas pipeline” to specifically exclude : (i) dedicated pipeline laid to transport natural gas to a specific customer to meet his requirements and not for resale and (ii) pipelines in a city or natural gas distribution network which are regulated by CGD Authorisation Regulations. Since the proposal is admittedly to lay a dedicated pipeline by Exarro and Sten Glass to their respective factories where natural gas will be consumed, it is not a “natural gas pipeline” and therefore falls outside the scope of applicability of NGPL Authorisation Regulations. Furthermore, as stated earlier, since the pipeline is intended to be laid in an authorised area for development of CGD network and is intended to be operated at a pressure (i.e. 3.9 bar) that is for secondary network comprising a CGD network, the proposed pipeline is falling in a category of pipelines forming part of CGD network.
- f) The pipeline is therefore one which is clearly not governed by NGPL Authorisation Regulations under the specific scope of Regulation 3 NGPL Authorisation Regulations.
- g) The said public notices are therefore ultra vires NGPL Authorisation Regulations and not valid notices under NGPL Authorisation Regulations.

7) **Not Valid Proposals under Reg. 19(2) NGPL Authorisation Regulations:**

- a) It is submitted that under the clear wordings of Regulation 19(2) NGPL Authorisation Regulations a proposal can only be submitted by an entity proposing to lay, build, operate or expand a dedicated pipeline “*to transport natural gas to a specific customer*”. The provision of Regulation 19(2) PNGRB NGP Authorising Regulations does not allow for and neither does it contemplate the specific customer itself submitting a proposal for laying a dedicated pipeline itself for its own purposes.

- b) This makes it evident that the concept of a dedicated pipeline is clearly that of a pipeline laid by an entity as a dedicated pipeline for supply of natural gas to a specific customer and the Hon'ble Board has the discretion to direct the same to be treated and converted into a natural gas pipeline from a dedicated pipeline. If the Hon'ble Board allows a customer to itself lay its own dedicated pipeline, then it will be going against its own authority to require such dedicated pipelines to be declared as natural gas pipelines later on.
- c) Regulation 19(1) PNGRB NGP Authorising Regulations makes this even more clear as it stipulates *“In respect of dedicated pipelines existing before the appointed day, the following provisions shall apply, namely: (a) entity having dedicated pipeline to transport natural gas to a specific customer before the appointed day shall submit details of the pipeline length, route, capacity and customers served along with the DFR of the project to the Board...”* This makes it clear that dedicated pipelines as a concept are those developed by an entity undertaking business of natural gas pipeline transmission as dedicated pipeline for one or more customers.
- d) Regulation 19(2) PNGRB NGP Authorising Regulations only reflects and carries on the concept elaborated in Regulation 19(1) PNGRB NGP Authorising Regulations as it stipulates: *“(2) In respect of dedicated pipelines proposed to be laid, built, operated or expanded after the appointed day, following provisions shall apply, namely: (a) the entity proposing to lay, build, operate or expand a dedicated pipeline to transport natural gas to a specific customer after the appointed day shall submit details of the pipeline length, capacity and details of the customers served along with the DFR of the project...”* This makes it clear that it is an entity already engaged in laying natural gas pipelines or providing natural gas transmission services that can submit a proposal for a dedicated natural gas pipeline for supplying transporting natural gas to a specific customer(s). It therefore cannot be a customer that submits a proposal for laying a pipeline for its own captive use. The concept of captive pipelines is not permissible under the PNGRB Act and the PNGRB NGP Regulations.
- e) From a review of the proposal it is apparent that Exarro and Sten Glass are the customers and therefore the proposal filed by them, are outside the scope or mandate of Regulation 19(2) NGPL Authorisation Regulation. It is therefore requested that the Hon'ble Board not proceed any further on this application. Furthermore, no DFR has been provided by the applicant. The said public notice and the application is outside the framework of Regulation 19(2) NGPL Authorisation Regulation.

## 8) *Proposals will result in parallel and multiple infrastructure*

- a. The said proposals of Exarro and Sten Glass make it clear that, if they are permitted, they will lead to duplication of gas pipeline infrastructure in the region and such duplication is against the framework governing development of CGD network, which is undertaken on the basis of infrastructure and marketing exclusivity being vested with the authorised entity to make the investment into development of the required infrastructure viable. This infrastructure exclusivity a key factor for viability of CGD network within an authorised area. The authorised entity is vested with infrastructure & the development of gas pipeline infrastructure on common carrier basis benefits customers across the State further downstream on the pipeline.
- b. We strongly believe that laying of a parallel pipeline infrastructure, which are clearly within the scope of CGD Network, not only renders the CGD network infrastructure and investment therein infructuous, but is also a waste of national resources. The same was also held by this Hon'ble Board in its order dated 15.06.2010 in the matter *M/s Shyam industries & Others Vs GAIL* (PNGRB Judgement dated 25<sup>th</sup> May 2011) wherein relating to an issue of a customer wanting to develop an alternate to an existing dedicated pipeline, the Hon'ble Tribunal (on page 53 of the Judgement) held “....*Since this infrastructure has already been created by GAIL, to suggest that the consumer can resort to alternate suppliers without using the infrastructure already created would require the consumer to duplicate the infrastructure the cost of which he has paid many times over which is not only cost additive, but also an infructuous investment that is neither in the interest of the consumers nor in the national interest.*”
- c. Development of parallel pipelines just to provide direct connectivity of customers to sources would jeopardize development of CGD Network infrastructure for customers that are located further downstream from the source and will result in imposition of disproportionate and higher costs on downstream customers who are away from the source. If the said proposals is considered then all customers that are located in proximity to a source of natural gas would want to develop their own pipeline to connect to source / third party pipeline and this would result in a common CGD network having to connect only such customers that are located at a considerable distance, thereby defeating the underlying principle of development of CGD Network of interconnected pipelines and would jeopardize development of CGD network infrastructure for entire authorised areas (away from the source). In such circumstances, the only way a CGD entity can *then* sustain its business model, is by deferring development and investment into pipeline networks.

The concept of a “dedicated pipeline” is that of a pipeline laid by an entity authorised to otherwise lay a CGD network or natural gas pipeline, to lay a dedicated pipeline to transport natural gas to a specific customer to meet his requirement and not for resale. The dedicated natural gas pipeline need not have the natural gas pipeline tariff determined for the specific natural gas pipeline but can be a separate tariff determined between the natural gas pipeline entity and the relevant customer. To allow this concept to be used by end consumers to themselves lay pipelines to their premises will negate the concept of CGD network and result in not merely unviability of the authorised CGD network but would result in multiplicity of infrastructure. In fact from the two public notices it is clear that there will be duplication of infrastructure if these proposals are even allowed as there will be two separate pipelines along the same route. Rendering the CGD infrastructure futile and lopsided and unviable laying of network.

- d. We would humbly submit for the kind consideration of the Hon’ble Board that the Government of India, vide notification dated 20.12.2006 has issued a Policy for Development of Natural Gas Pipelines and City or Local Natural Gas Distribution Networks (“**said Policy**”). One of the objectives of the said Policy is to enable the development of a nation-wide natural gas pipeline grid and CGD networks to create an efficient industry structure. The said Policy (vide Para 2.1) also clearly states that it is applicable to “dedicated pipelines *laid to supply* gas to specific consumers”. This further emphasizes that a dedicated pipeline can only be one laid by an authorised entity to a consumer and there is no scope for a captive pipeline or a “dedicated line” being laid by individual consumers themselves. In Para 2.2 the said Policy stipulates that one of the objectives of the Hon’ble Board shall be to select entities to lay pipelines/CGD network in a transparent and objective manner with a view to facilitating investments in the sector and protecting the interests of the consumers. It is humbly submitted that the present proposal submitted by Exarro and Sten Glass are detrimental to investments in the CGD sector and does not in any manner protect the interests of consumers. It is submitted that the said Policy requires the Hon’ble Board to take into account an industry wide view and “interests of consumers” and not only one particular consumer.
- e. The bid issued by ONGC was itself governed by the laws of India. Consequently, the bid if it is resulting in violation of applicable Indian laws, will be void. Consequently, the offtake of gas from the ONGC gas fields has to be in accordance with applicable statutory framework and ONGC cannot claim that its bid will override applicable statutory framework and authorisations to AGP CGD to develop CGD network on exclusive basis in the demarcated authorised area of Barmer, Jaisalmer and Jodhpur Districts.



## 9) Conclusion and Request

- a. Since the matter is sub-judice, we request the Board not to proceed until the Division Bench of Delhi High Court decides the matter. We would therefore submit to the Hon'ble Board, that the said proposals by Exarro and Sten Glass cannot be considered as they are not valid proposals under the existing regulatory framework of PNGRB Act read with the NGP Authorization Regulations and CGD Authorisation Regulations. Any further proceedings will be ultra vires PNGRB Act and in violation of the authorisation granted to AGP CGD for development of CGD network in the authorised area of Barmer, Jaisalmer and Jodhpur.
- b. We therefore request that the said public notices be withdrawn and not acted upon as they are ultra vires the PNGRB Act and regulations thereunder.
- c. This communication is without prejudice to our rights and cannot in any manner be taken as a waiver of any of our rights or be interpreted in any manner prejudicial to our rights.

Thanking You.

For and on Behalf of  
AGP CGD India Pvt Ltd



Susheel Jad  
President and General Counsel

