

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 28.12.2023 of application for laying, building and operating a dedicated pipeline for natural gas from ONGC’s Gamnewala GCS Jaisalmer, Rajasthan to M/s Kopek Polyplast Ltd, Jaisalmer, Rajasthan under Regulation 19(2) of PNGRB (Authorizing Entities to Lay, Build, Operate or Expand Natural Gas Pipelines) Regulations, 2008**

Respected Madam,

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 28.12.2023 issued by the Hon’ble Board is outside the statutory framework of PNGRB Act and applicable regulations.

- 1) In light of the fact that the office of Member (legal) is presently vacant, we would therefore request that no further proceedings be undertaken in relation to the said Public Notice as the said proceedings would be without jurisdiction.
- 2) Notwithstanding and without prejudice to jurisdiction issue, we are submitting our objections to the Public Notice dated 28.12.2023:
  - a. The proposal is clearly being made by end-user consumer of gas with daily consumption of less than 50,000 SCMD, who have been allocated gas by ONGC, located within the Jaisalmer District authorised to AGP CGD. The same is in violation of the judgment of Delhi High Court in the matter of AGP City Gas Private Limited vs. PNGRB (W.P. (C) 11645/2022) wherein it was held that an industrial customer with a requirement of less than 50,000 SCMD within the authorised area has to be supplied gas by the authorised entity.
  - b. 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, till the matter is decided by the Delhi High Court.
  - c. The proposal 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. 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) 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. 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. It is submitted that the Board has to function within the powers conferred under the PNGRB Act.
- b. 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.
- c. None of these powers/functions allow to authorise consumers to lay, operate and maintain their own captive natural gas pipelines.
- d. The very concept of captive natural gas pipelines does not exist within the framework of the PNGRB Act.

**4) Hon’ble Board’s public notice and Kopek’s proposal is 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 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 non-discriminatory 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 Hon’ble Board authorises 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. The category of transportation of natural gas to premises of consumers within identified geographical areas, which is undertaken through “city or local natural gas distribution network”.
- d) 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. 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.
- e) 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).

- f) 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.
- g) 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.
- h) In light of the clear statutory framework, the proposal by a consumer such as Kopek 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.
- i) 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.

5) ***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) Kopek is not an “entity” 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. Even if it is to be assumed that Kopek 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 Kopek to its factory 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.
  - d) The pipeline is therefore one which is clearly not governed by NGPL Authorisation Regulations under the specific scope of Regulation 3 NGPL Authorisation Regulations.
  - e) The said public notices are therefore ultra vires NGPL Authorisation Regulations and not valid notices under NGPL Authorisation Regulations.
- 6) **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 the statutory scheme of PNGRB Act, which require the entity to be selected in transparent manner by way of bidding for declaring it as a common carrier.

- 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 Kopek is the customer and therefore the proposal filed by them, is 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.

**7) Proposal will result in parallel and multiple infrastructure**

- a. The said proposal of Kopek makes 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. 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).

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.

- 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.
- 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.

- f. Further, we would also like to highlight that if consumers of natural gas are permitted to lay their own pipelines, it would create multiple infrastructure in the same ROU, leading to infructuous investments and further, result in a public safety hazard as the consumers who will lay down pipeline are not involved, nor have the expertise to undertake the laying and maintenance of natural gas pipelines, and are not subjected to any regulatory framework for the stringent safety requirements otherwise applicable to entities, including maintaining duly qualified personnel and regular maintenance. After 5 years, multiple customers will ask for dedicated pipeline if more gas is discovered in ONGCs field in Jaisalmer, that would lead to issues in ROU space and further, there can a possibility that the already laid dedicated pipelines will be declared as common carrier and therefore, bypassing the transparent bidding process by the Board.

## 8) 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 proposal by Kopek 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 Districts.
- 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