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Gas

October 11, 2019

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

2745/2019/10/10/Secy.

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PNGRB/
दिनांक 14/10/19
Dt.

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AA (All)

**Subject : Comments on Draft PNGRB (Guiding Principles for Declaring City or Local Gas Distribution Networks as Common Carrier or Contract Carrier) Regulations, 2019.**

**Ref. : Public Notice no. PNGRB/AUTH/ 7-MIS(3)/2015 dated 22 August 2019**

Dear Madam,

With reference to the abovementioned draft regulations, kindly refer AGL letter dated July 31, 2019 in response to PNGRB webhosted Concept Paper on Determination of Transportation rate for CGD and Transportation rate for CNG, attached as **Annexure 1**. By way of this letter, AGL had requested PNGRB to kindly keep discussions on the said concept paper in abeyance till such time ambiguity surrounding the relevant regulations is removed. We request PNGRB to kindly consider our comments contained in the said letter which are also valid in the current context.

With reference to CNG stations, it is submitted that in several bidding rounds conducted by PNGRB it was mandated that CNG stations shall be installed by authorized entity only. The CNG infrastructure and associated equipment are integral part of the CGD network and CNG stations are covered under the network exclusivity under the extant regulatory regime. Allowing any other entity to establish CNG stations post expiry of marketing exclusivity period would be in contravention to the Act and regulations.

During the past two years or so, the CGD sector has gained significant momentum in the bidding rounds 9 and 10. The CGD sector in India is at the cusp of a growth trajectory never witnessed in the country.

In view of the above, it is submitted that formation of such critical regulations without complete clarity would add undue regulatory and legal risk, which needs to be avoided at this stage in the interest of all stakeholders.

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Further, the declaration of CGD network as common / contract carrier, CNG stations being part of CGD network, open access regime, tariff and capacity determination are all intertwined subjects. Accordingly, it is reiterated that PNGRB may constitute a Focused Group with representatives from CGD industry and subject matter experts to look into all aspects relating to this critical issue and submit the recommendation to PNGRB to enable a well thought out formulation of appropriate regulations. Based on the report of the focused group, the Hon'ble Board may take a holistic view on the overall regulatory regime and take appropriate decision on the regulations.

In addition to the above submissions, our initial comments on the draft regulations are submitted as **Annexure 2** enclosed herewith. Detailed comments can be submitted to the focused group as indicated above.

We look forward towards favorable consideration of our views and suggestions.

Yours sincerely,

For Adani Gas Ltd.

*K.P. Raval*  
11/10/19

**(Kuntesh Raval)**  
**(Vice President)**

Encl: As above

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July 31, 2019

To,  
Secretary,  
Petroleum & Natural Gas Regulatory Board,  
1st Floor, World Trade Centre,  
Babar Road, New Delhi-110001

**Subject: Determination of Transportation rate for CGD Network and Transportation rate for CNG**

**Ref. No.: PNGRB/COM/1-CGD Tariff(1)/2015 dated 28<sup>th</sup> June, 2019.**

Respected Madam,

This has reference to your public notice ref. No.: PNGRB/COM/1-CGD Tariff (1)/2015 dated 28th June 2019 webhosted by the Hon'ble PNGRB pertaining to determination of Transportation rate for CGD Network and Transportation rate for CNG.

We appreciate that Petroleum & Natural Gas Regulatory Board is soliciting the views of all entities, experts and stakeholders on the proposed Concept paper on Determination of Transportation rate for CGD Network and Transportation rate and is also holding Open House to discuss the same.

In this regard, we may invite your attention to our communication dated 19th July'2019 seeking extension of the timelines for submission of the Concept Paper. The Hon'ble Board may please note that the issue being dealt with under the Concept Paper is of utmost importance for all the stakeholders in the natural gas value chain.

Therefore, granting of additional time to the stakeholders for submitting their detailed views would go a long way in assisting the regulator to formulate the required regulations on Determination of Transportation rate for CGD Network and Transportation rate for CNG on a strong footing.

As the time extension has only been granted till 31st July'19, we hereby submit our prima facie views for consideration of PNGRB, while still anticipating that further time extension would be granted for a more intense deliberation on the subject.

We would like to submit following for your kind consideration:

**1. Judicial Clarity:**

- It is understood that a writ petition regarding PNGRB regulations on Exclusivity for City or Local Natural Gas Distribution Network is presently pending before the Delhi High Court, wherein a status quo order had been passed. In light of the same, PNGRB may like to take a view with regards to initiating discussions on the subject of exclusivity with the said matter being sub-judice in the Delhi High Court.

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- As rightly pointed out by PNGRB in the Concept Paper itself, the Supreme Court Judgment in PNGRB v/s Indraprastha Gas Limited has held the PNGRB (Determination of Network Tariff for City or Local Natural Gas Distribution Networks and Compression Charge for CNG) Regulations, 2008 to be ultra vires the PNGRB Act.
- In view of absence of judicial clarity with respect to the above, it is our humble submission to the Hon'ble Board that the discussion on the Concept Paper be kept in abeyance till such time ambiguity surrounding the regulations is removed.

## **2. Market Maturity:**

- For any regulation on open access to be operational, it is imperative to create a conducive environment to facilitate the functioning of the open access framework.
- The current transmission infrastructure in the country is owned and operated by handful of companies promoted by Central or State Government. Same companies or their sister concerns also hold significant ownership of gas as well as downstream CGD networks.
- The concept of unbundling between infrastructure and marketing holds good for the transmission infrastructure which is principally built on "Use & Pay" model for shippers. On the other hand CGD business is necessarily a retail business which has a very important function of marketing embedded into it. The business model of CGD involves low volume, low creditworthiness, high number of customers which requires building a capital-intensive pipeline infrastructure. The margin earned from the marketing activities form a very important source for funding the infrastructure. Calculations based upon ROCE undermines the entrepreneurial efforts and business aspirations from CGD business and makes the future investments non lucrative.
- In order to make natural gas sector move towards competition, need is to make the transmission infrastructure truly "independent & open", make transmission contracts flexible and bring ease of operations. The unbundling of transmission business initiated by GoI and PNGRB is currently in early stages of "work in progress". Any exercise to open the CGD networks ahead of unbundling of the transmission networks would lead to absurd results. Indian gas market is yet to attain maturity for the unbundling of the gas transmission as well as for the determination of tariffs based on entry exit structures.
- Further, given the complexity surrounding upstream gas allocation policy, availability/access to RLNG, non-uniform central and state taxation structures, open access in gas transmission, it would be premature to conceptualize an open access framework in the CGD network.
- The risks taken by the CGD network owner on both the gas supply/transmission side as well as the PNG/CNG sale side are already very high in comparison to the rewards and any attempt to introduce open access would further distort the same. In absence of a commensurate risk reward balance, it would be a very difficult and perilous way forward for developing CGD infrastructure in the future. .



- Therefore, unbundling of a retail network may not necessary be in the interest of consumers, business & society.

### **3. Regulatory Framework:**

- Section 20 of the PNGRB Act empowers the board to declare CGD network as common carrier and also prescribes the mandatory framework for declaring CGD Network as common carrier. Most importantly the said Section 20 of the PNGRB Act defines the process by which the Board has to declare the network as common carrier. However, this has to be done with prime objective of maintaining public interest, introducing competition and at the same time ensuring future expansion and compliance of the service obligations.
- The said Section 20 also does not envisage that the CGD network would become common carrier upon expiry of exclusivity period under the regulations on Exclusivity for CGD network. Further the regulations on Exclusivity of for City or Local Natural Gas Distribution Network, rely on allowing third party access to its CGD Network in accordance with the provisions of relevant regulations for declaring CGD Networks as common carrier or contract carrier. Hence, in absence of an underlying cohesive regulatory framework with regards to declaration of common carrier, exclusivity of CGD, open access in a CGD etc. any attempt to determine tariff of a CGD network through the said concept paper, would not be in the interests of the stakeholders involved.

#### **Way forward:**

In view of the ambiguity on the important issues as elaborated above, we have not provided our comments on the Options as mentioned in the said Concept Paper and request the Hon'ble Board to provide clarity through their views on the above points.

In view of above, sensitiveness on the issue and long term ramifications, we request you to kindly consider constituting a focussed industry group of experts to help the Regulatory Board and Industry to understand the need, implications, basis, timing, process and phasing for introducing & operationalizing unbundling and open access. This Group may seek information and be guided by experiences in other matured gas markets.

Further, till such time this Industry Group presents its report, the concept note along with its guiding regulations may be put on hold.

We look forward to your kind considerations.

Sincerely yours,

For Adani Gas Ltd

**Bhashit Dholakia**  
**Authorised Signatory**

#### Clause-wise Initial Comments on the Draft Regulations on Declaration of CGD as Common / Contract Carrier

1. Regulations 4: Guiding Principles for Declaring City or Local Natural Gas Distribution Network as Common Carrier or Contract Carrier

Issue/Observation:

- The principles mentioned in the draft provisions cover those which take care of the interest of the consumers.
- PNGRB Act preamble lays down the objective behind formation of PNGRB '...so as to protect the interest of consumers and entities engaged in specified activities...'.

Suggestion:

- Based on the above it is suggested that the principles also cover 'protecting the interest of CGD entities'.

2. Regulation 5: Issuance of Public Notice and Proceedings for Declaring CGD network as a Common Carrier or Contract Carrier Under section 20 of the Act

Issue/Observation:

- Draft regulations provide that PNGRB will follow a process after which it will declare a GA (in full or part) as common carrier or contract carrier. But, basis for declaring any network as common carrier is not defined and leaves ample subjectivity and ambiguity in decision making creating a legal quandary. The criteria should be objective leaving little room for interpretation and discrimination between entities.
- As far as declaring a part of the CGD network as common / contract carrier is concerned, such possibility is not provided in the Act.
- Draft regulations stipulate submission of tariff application under Tariff Regulations 2019 but the referred regulations are not notified. In absence of the same, it will not be possible to provide comments on the proposed process.
- Draft regulations stipulate 6 weeks' timelines for submission of tariff application, capacity application, details of own capacity requirement and that allocated on contract carrier basis. It is submitted that, given the complexity and multi-functional details required, 6 weeks' timelines are too short. Draft Regulation 6(1) specifies a timeline of 180 days for submitting the capacity application.

### Suggestion:

- It is suggested that the key criteria, milestones, etc. which are objective in nature are provided in regulations. The same would be assessed in order to declare the GA as common / contract carrier.
- Further, it is also suggested that PNGRB issues a reasoned order giving all the details and analysis based on which the decision on declaration is taken.
- Notification of Tariff Regulations 2019 as referred in the draft regulations is essential for a holistic review.
- It is requested that the timelines may be extended to 6 months as several submissions are being sought.

### 3. Regulation 7: Common Carrier Capacity of Common Carrier CGD Network

#### Issue/Observation:

- The Draft Regulation 7(4) stipulates an obligation on the authorized entity 'to undertake best efforts to accommodate a request'. The provision imposes a vague and subjective obligation upon the entity which should be avoided.
- The regulations 7(5) stipulate expansion of capacity in the event when common carrier capacity is less than 20%. Creation of such capacity (which may always not be used fully or partially in future) would require additional expenditure leading to extra burden to the customers in terms of higher tariff.
- Even in case of natural gas pipelines, there is a provision for creating extra-common carrier capacity, but you will appreciate that such capacities have been mostly lying idle since many years which effectively means that such capacity creation may not have been necessary.
- Regulation 7(5) mentions the terms 'open access basis' but the same has not been clarified and defined.

#### Suggestion:

- It is requested to review the provision of mandating extra capacity creation and provide for optimum capacity creation in line with the forecasted demand / consumption pattern by authorized entity.
- The terms 'open access basis' needs to be appropriately defined.

### 4. Regulation 8: General Principles for Common or Contract Carrier Capacity

#### Issue/Observation:

- The regulations provide for shipper to assign or trade capacity in the open market. Trading would lead to secondary market creation beneficial to a shipper

who has taken long term capacity commitment. However, if right measures for checking undue advantage are not prescribed it may lead to unwanted hoarding and profiteering.

- Assignment is "sub-letting of premise" which should not be allowed. It can lead to mis-use of open access capacity.

### Suggestion:

- It is suggested that as a part of guiding principles, it should be amply clear that capacity assignment and trade are allowed to enable relaxation from long term commitment and is not a business opportunity and appropriate penalties need to be built in in case of hoarding, profiteering from such trading.

## 5. Regulation 9: Method of Allocation of Common carrier Capacity for City or Local Natural Gas Distribution Network

### Issue/Observation:

- The draft regulations stipulate process and timelines related with capacity booking (access) and daily operations (scheduling/allocation) of the booked capacity. However, the process appears to combine both the processes which is ambiguous.
- It is submitted that there are two separate processes for the open access. (1) Contracting the spare capacity amongst the shippers who desire to use the capacity, and (2) Day to day nomination, scheduling and allocation of the contracted capacity amongst the shippers who have contracted the capacity.
- Booking (Contracting) the capacity is a process requiring more time as it requires negotiation on commercial terms, physical contract signing, may require creation of new customer code/customer details in the accounting system, LC/BG requirement etc. This would require different set of timelines.

### Suggestion:

- Regarding the process of contracting and the process of daily operations, it suggested to bring out distinction in the provision as well as have separate process and timelines.

## 6. Regulation 11: Expansion of Availability of Gas in Authorised Area whose City or Local Natural Gas Distribution Network has been declared as Common Carrier

### Issue/Observation:

- Draft regulation 11 would be an infringement of exclusivity rights and in conflict with the 25 year network exclusivity granted under authorization.



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- It is submitted that any other entity cannot be allowed to lay pipelines within a GA on nomination basis. This would give any entity an unbridled access to any geographical area on nomination basis which is not provided in Act and the same is in contravention of the Authorization Regulations which stipulate grant of authorization only through bidding.
- The provision says 'a person intends...'. This means that even a person can plan for supply of gas / lay the lines etc. All the critical aspects of the business can be dealt with well by an entity rather than a person.

### Suggestion:

- It is suggested to delete the provision which allows any other entity to lay, build and operate network within an authorized GA.

## 7. Regulation 12: Provision of Access to third party CNG stations

### Issue/Observation:

- PNGRB has conducted several bidding rounds and have issued authorization to more than 220 GAs till date. In all the bidding rounds, the authorized entity is mandated to set-up CNG stations including the on-line compressors.
- The Act, Regulations and the bidding rounds make it clear that CNG stations form part of the network and the exclusivity of the network shall remain with the authorized entity over its economic life.
- Draft provision of allowing any entity to set-up CNG station within a GA are in contravention to the Act and regulations thereunder and bid conditions. This would disturb the basics of investment which is unfair and unjust too.

### Suggestion:

- As CNG stations have been an integral part of the network and same should continue to be covered under infrastructure exclusivity granted to the authorized entity.

## 8. Regulation 12: Provision of Access to third party CNG stations

### Issue/Observation:

- The draft regulations should set out the 'guiding principles' which form an ambit of the regulatory framework on the declaration for open access.
- However, it is observed that the draft regulations, in several provisions, rather provides for steps or process to be followed in the process of declaration as well as post declaration.

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- It is respectfully submitted that provisions of the regulations should only provide guiding principles for the declaration.
- All subsequent steps, detailed procedures etc. may be subsequently finalized and released as separate regulations.

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