

2753/2019/0/0/secy.

Subject: **MNGL Comments on "DRAFT GUIDING PRINCIPLES FOR DECLARING CITY OR LOCAL NATURAL GAS DISTRIBUTION NETWORKS AS COMMON CARRIER OR CONTRACT CARRIER"**

Date: 11/10/19 08:24 PM

From: Amol Hatti <amolhatti@mngl.in>

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Secretary <secretary@pngrb.gov.in>

MNGL Comments on PN dated 22 08 2019 regarding dec... (87kB)

Dear Ma'am,

This has reference to the Public notice no. PNGRB/AUTH/7-MIS(3)/2015 dated 22.08.2019 w.r.t. draft "PNGRB (Guiding Principles for Declaring City or Local Natural Gas Distribution Networks as Common Carrier or Contract Carrier) Regulations, 2019".

As solicited in the above public notice, we have given our comments/suggestions for kind consideration of the Board in the attached file.

Thanks & Regards,

Amol Hatti

Chief Manager (BD) |

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MNGL VIEWS ON DRAFT GUIDING PRINCIPLES FOR DECLARING CITY OR LOCAL NATURAL GAS DISTRIBUTION NETWORKS AS COMMON CARRIER OR CONTRACT CARRIER

This has reference to the Public notice no. PNGRB/AUTH/7-MIS(3)/2015 dated 22.08.2019 w.r.t. draft "PNGRB (Guiding Principles for Declaring City or Local Natural Gas Distribution Networks as Common Carrier or Contract Carrier) Regulations, 2019".

In this regard, MNGL's views are as under:

1. Firstly, the Regulations w.r.t. PNGRB (Exclusivity for City or Local Natural gas Distribution Network) Regulations, 2008 is under challenge in [W.P. (C) 9374/2015] before Delhi High Court and is sub judice. The Hon'ble Delhi High Court vide order dated 30th September 2015 has directed that any order passed by the Board (PNGRB) shall be subject to further order of the Hon'ble Court. Further, Hon'ble Supreme Court in Judgment of *PNGRB v. IGL case (2015)* has held that the network tariff for CGD can be determined by the Board only once they are declared to be common carrier networks in accordance with *Section 20* of PNGRB Act. In view of the above and interlinked legal issues, it is essential to close the above issues first prior to discussion on the Guiding principles referred to above. Therefore, it is suggested that the Board should await the outcome of the pending petition before proceeding with the finalisation of the Regulations.
2. As Board may be aware that there are multiple genuine challenges for the development of City Gas Distribution (CGD) project in the authorized area and therefore requires attention to the following:
 - a) The time required for obtaining permissions from various statutory authorities for pipeline laying activities and commencement of activities for CNG stations is humongous which has been brought to the notice of Board including MoP&NG by several entities time and again.
 - b) The entire CGD business being a project based activity involving creation of infrastructure in a phased manner, take considerable time to establish the same.
 - c) The CGD project activities are interdependent and cannot be executed in isolation. Thus, with sequential progress, infrastructure is created and supply of natural gas to the end users is effected.
 - d) The CGD industry has got a limited resources in terms of manpower, material, equipments & vendors and requires a specialised attention/competency by all the agencies engaged in the project.
 - e) Huge investments are required by CGD entity for execution of project and gestation period is longer than the usual businesses. Being a utility sector, it requires continuous expansions, operations & maintenance services with precision which requires continuous expenditure.

- f) Exorbitant charges are still being levied by various statutory authorities for Road restoration and formulation of one India-one Policy for fast track development of CGD is yet to see light of the day.
- g) Request of single window clearance for CGD sector is yet to be materialised despite various representations and follow ups with the multiple authorities at various levels.
- h) In order to sustain in the business for CGD sector, marketing exclusivity period as per the provisions of PNGRB regulations is very inadequate and needs to be extended to at least 25 years from the date of authorization so that entities can establish requisite infrastructure to cater to the demand of customers and sustain economically.

3. With respect to proposed Clause 6 of draft Guiding Principles:

The proposed draft mentions regarding interim arrangement for determination of a common carrier capacity in City or Local Natural Gas Distribution Network wherein it has been made mandatory for the authorised entity to submit the details with respect to the capacity of its network within 180 days of notification of these regulations.

Your attention is invited to Section 20(1) of the Act which states inter-alia *"If the board is of the opinion that it is necessary or expedient, to declare an existing pipeline for transportation of petroleum, petroleum products and natural gas or an existing city or local natural gas distribution network, as a common carrier or contract carrier or to regulate or allow access to such pipeline or network, it may give wide publicity of its intention to do so and invite objections and suggestions within a specified time from all persons and entities likely to be affected by such decision"*

Thus, the existing act stipulates seeking objections and suggestions from all the persons and entities likely to be affected by a decision with respect to formation of opinion of the Board about declaring an existing pipeline as a common carrier or contract carrier or to regulate or allow access to such pipeline or network.

From the above, it appears that instead of seeking objections and suggestions from all the persons and entities likely to be affected by a decision of PNGRB through the proposed regulations PNGRB is attempting to make it mandatory for the Entity to submit data by themselves for all its City or Local Natural Gas Distribution Networks or pipelines after the expiry of its exclusivity period, which is contrary to the PNGRB Act. The Act stipulated application of mind before declaring any pipeline as common carrier or contract carrier whereas in this case it has been proposed to be made automatic.

4. With respect to proposed clause 7 of draft Guiding Principles:

Through the proposed draft, PNGRB has sought to bring a new element by making it mandatory on the CGD Entity to make available 20% of its capacity for any other entity or customer irrespective of the requirement of the Entity which again goes contrary to the intention of the Act wherein the capacity could be ascertained only after giving

hearing to the particular Entity whose network, the Board in its opinion intends to declare it as a common carrier or contract carrier considering the requirement of the Entity and therefore the proposed regulation is ultra vires the Act.

5. With respect to proposed clause 11(1)(b) of draft Guiding Principles:

In the proposed draft, the clause is silent about the consequences when the Board fails to decide on the application so made within 60 days from the completion of public consultation. The same need to be specified clearly.

6. The proposed clause no. 12 defined in draft Guiding Principles states that "Upon the expiry of marketing exclusivity, CNG stations shall not be considered as being covered by the infrastructure exclusivity that may continue to vest with the authorized entity under the provisions of regulation 5 of the Petroleum and Natural Gas Regulatory Board (Exclusivity for City or Local Natural Gas Distribution Network) Regulations, 2008". MNGL raises a strong objection to the above proposed clause.

The entities which were formed on the directives of Central Government prior to existence of PNGRB had planned their entire execution and customer acquisition activities considering the infrastructure exclusivity of 25 years. The compression is a regulated activity as per the provision of PNGRB Regulation 2008. The pipeline infrastructure created by authorized CGD entity is mainly for creating Mother Stations and Online CNG stations. It is pertinent to mention that considering the same, PNGRB has given an affidavit/undertaking to the Hon'ble Court that compression facility is a part of infrastructure creation for which exclusivity period of 25 years exists. Thus, the proposed clause 12 now by PNGRB is a gross violation to the fundamentals of exclusivity period and the undertaking/affidavit given by PNGRB to the Hon'ble Court in this regard.

Also, imposition of such regulation w.r.t. declaring a City or Local natural gas distribution network as a common carrier or contract carrier at this stage not only unwarranted but also is going to impact the business of authorized entity with huge capex investments.

It is further submitted that if at all PNGRB permits any other Entity for installation of CNG stations then it is suggested that Board may ask the new Entity to install new CNG stations in the area(s) where the existing Entity has not put up any CNG stations to develop the area in the right spirit. Also, if there is no such area left out and still the new Entity intends to install a new CNG station, Board may specify a particular distance for installing new CNG stations from the one already existing one. This would serve the purpose of expansion of the CGD network in real terms. It is also submitted that any new Entity seeking access to CGD network is mandatorily fastened with obligations of meeting targets with respect to PNG connections and CNG installations.

7. MNGL would like to point out to the primary objective of the Board i.e. to develop various City gas Distribution networks in a large no. of cities to provide PNG & CNG to general public at large in line with the goal set up by Govt. of India. The objective now bringing out by PNGRB to declare City or Local Natural Gas Distribution network as common carrier or contract carrier at the behest of protecting the interest of consumers by fostering fair trade and competition among the entities is nowhere comparable to the broader goal of developing CGD network in large no. of cities. The same can be understood from the following eye opening facts:

- a) So far Board has been acted with a motto to develop CGD networks in various cities with authorization to the CGD entities for the authorized GAs. Subsequent to direct authorization (without bidding) and thereafter against bidding, despite the different challenges the CGD entities had been putting their heart and soul to develop the authorized GA for meeting the CNG & PNG nos. without looking at the economics of reaching out to the general public at large.
- b) Had the exclusivity period been made clear to the existing entities, the existing CGD entities would have concentrated on profitable ventures within the GA. Now, with the opening of opportunities for the Third Parties in the developed GAs, such parties would only enter into CNG & Industrial Segments (cherry picking) and take away the cream by paying declared transportation charges. The PNG Domestic segments requires heavy capital investment and gives low returns. Therefore, authorized entity will suffer at one end and Third party will gain at other end directly.
- c) The country has already faced the situation where Nationalized Banks have put up their network in the far flung/remote areas and Private Banks have only preferred to put up their units in major cities/urban areas to enjoy the cream of the business.
- d) If such kind of opportunities are created by Board through regulation, we are afraid about the fate of future bidding rounds of PNGRB where probably there would be inadequate interest shown by CGD entities having low potential and the CGD players will only be engaged in trespassing in potential existing GAs developed by other CGD players. In this way, not only the development of existing CGD would be affected adversely but also the possibility of developing new GAs will diminish which will be disastrous to the dream of Govt. of India to reach out to the far flung areas of the country.

Thus, the focus of every CGD (limited in nos.) should be on the GAs awarded to them and not to get into competition with other CGDs in their GAs. Otherwise, it may so happen that many CGDs may not give importance to their own GAs considering ready

potential in other GAs. In the process, the objective of Government of India may be compromised which is contrary to the National interest.

- e) If at all it is to be implemented, then there should be mandate for Third Party to invest in PNG Domestic segment with certain degree of targets as well which will probably lead to proper rationalization by them before entering into such GAs.

Also, Board may consider higher penalty for such Entity who does not meet the targets in their authorised GA and trespass in other GAs looking at the ready potential.

- f) Also, the clarity is required on why the associates of the authorized entity whose City or Local Natural Gas Distribution Networks will be declared as common carrier or contract carrier will be given the last priority while allowing third party to enter when it is referred as open access to the network.

In light of above, MNGL is of the view that Board while waiting for resolution of the legal issues by the Hon'ble Court may also consider the above referred genuine challenges of CGD sector before initiating any such process of declaring CGD network a common or contract carrier. Even if Board still decide to impose any Guiding Principles/Regulation, the same should be applicable from prospective effect without affecting the already authorized Entities/GAs. Any amendment(s) with regulation should be done for future GAs only and rule of the game should be known to the participating entities at the time of bidding.

