

Minutes of the Open House Discussion held on 19th May, 2020 –
CGD Amendment regulation, 2020

1. An Open House discussion was held on 19.05.2020 through video conferencing regarding draft PNGRB (Authorizing Entities to Lay, Build, Operate or Expand City or Local Natural Gas Distribution Networks) Amendment Regulations, 2020, which was chaired by Shri. D. K. Sarraf, Chairperson, PNGRB and attended by Member, Secretary and other officers from PNGRB. A list of attendees from PNGRB and as well as the entities present during the discussion is attached as **Annexure I**.

2. The house opened for discussion with comments from Adani Gas Limited, regarding the amendment proposed in regulation 5 (6) (b) (i) & (ii). They commented that going by the proposed amendment, any consortium partner with minor share in the consortium, as well as being a financial investor or a passive investor would become eligible for bidding. Such entities may not have the required technical skill and/or experience of having laid required quantum of hydrocarbon pipeline or a CGD network, which may result in having a technical partner and a financial partner as the consortium members, just in order to qualify for the bid. The entity, therefore suggested that an entity should only be eligible if the entity was part of the original consortium and was authorized by PNGRB, and the entity was the lead consortium partner only, as safety is essential and eligible partner with qualification is required. They further commented that the same shall be applicable on the clause (ii) of this sub regulation 6 (b).

3. Regarding regulation 5 (6) (b) (iv), IOCL submitted that CGD business need specialized technical manpower for project execution and O&M activities, therefore, clause (iv) of sub-regulation 6 (b) should not be omitted. Further to this point, GAIL Gas Limited conveyed that if clause (iii) & (iv) are omitted, then no new player would be able to enter the CGD market. They also requested PNGRB to replace the word “constructed” by “Construction including laying of hydrocarbon pipeline” in sub-regulation 6 (b) (i) and (ii) of regulation 5. PNGRB in this regard stated that this clause made it very simple and easy to participate in the bidding rounds, and it had been omitted to make the participation more stringent, in order to allow only genuine eligible bidders.

4. Regarding the proposed regulation 5 (6) (b), AG&P requested PNGRB to also include the Indian entities/ subsidiaries of the consortium partners to whom the authorization has been transferred by PNGRB.

5. AG&P along with GAIL Gas Limited conveyed that the proposed amendment to regulation 5(6) (f) is in effect mandating that the SPV created by a successful consortium should immediately meet the minimum net worth requirements as stipulated for the geographical area as per Regulation 5(6)(e), therefore, the amendment in 5 (6) (f) is not required since risk relating to performance of the entity is already being mitigated with the performance bank guarantee and penalties and lock in criteria and this measure would disincentivize bidding through consortium. They requested that instead the net-worth of promoters needs to be considered for a particular GA instead of the new company, or instead of infusing capital in the new entity, it can be supported by Corporate Guarantee

from the promoters. In this regard, PNGRB conveyed that regulations 5 (6) (e) and 5 (6) (f) are to be read with Schedule K of the regulations, and accordingly, if an entity does not have the required net-worth, then the net-worth of the promoter(s) is allowed to be considered as detailed in Schedule K provided it is supported by corporate guarantee from promoter(s).

6. Regarding the insertion of proviso in regulation 9, sub-regulation (1), Adani Gas Limited deliberated that upon achievement of MWP or expiry of exclusivity period from the purview of common or contract carrier, the PBG value should be made equal to the value derived as per the table based on population given in regulation and the original PBG submitted at the time of grant of authorization should either be released in lieu of new PBG of normal value or original PBG may be suitably reduced. The limit of 40% reduction post achievement of MWP would unnecessarily put additional cost burden upon CGD entity in addition to blocking non fund-based limits of the entity with no gain to any stakeholder, especially in old cases which had considerably higher PBG amounts. GAIL Gas Limited in this regard supported the 40% limit and stated that reduction of value of PBG after achievement of Work Program/MWP is a welcome step and it should be capped to 40% of initial PBG (Excluding Additional Bid Bond). It was requested that after meeting the minimum MWP, if the PBG amount can be reduced to 20% of initial PBG, it would suitably reduce the burden on CGD entities and at the same time would ensure PNGRB in ensuring service obligations after meeting the MWP. It further requested PNGRB that additional bid bonds should not be a part of PBG. Some banks refuse to provide high value PBG wherever MWP has already been achieved and high value PBG affects the company's financial rating and its borrowing capacity and the bank charges on high value PBG are additional burden to the company's financials. IMC Limited requested clarification on reduction of PBG to 40% of initial PBG after 100% achievement of the work programme or on expiry of exclusivity from the purview of common carrier or contract carrier.

7. GAIL Gas Limited further requested that in case of consortium bids, the time period of incorporation of the new company may be at-least nine months, if not one year, considering various approvals required from the concerned ministry/ Niti Aayog etc. To this, PNGRB conveyed that if a time period of one year is granted and the entity is unable to get the clearance from the concerned Ministry, the uncertainty of development of that particular GA would get extended to one year from the current six months. Ideally, requisite approvals should be in place at the time of bidding itself. Moreover, the issue may be taken up with NITI Aayog to process such case in time.

8. Regarding regulation 9(1) AGL suggested that renewed PBG may be allowed to be submitted one month before expiry of existing PBG instead of existing provision of three months. This will bring competition amongst banks otherwise existing bank will always be in an advantageous position at the time of renewal as it gain advantage of 3 months period whereas in case of PBG from the new bank, entity will be required to pay the BG charges for the overlapping period of 3 months to both the banks. AG&P suggested to reduce the validity period of PBG from three years to one year as it would reduce the cost of PBG significantly to the tune of 50%.

It was enquired by the entities whether the validity period of PBG is inclusive of or exclusive of claim period. During the discussions, Gujarat Gas, AG&P brought out that the PBG issuing bank automatically add claim period (which may differ from bank to bank) for which entities have to pay commission to banks. IGL brought out that ICICI considers claim period of one year unless the expired PBG in original is returned to banks.

On the suggestion of AGL for reducing submission of PBG to one month before the expiry of existing PBG instead of three months and suggestion of AG&P for reducing the validity period, PNGRB informed that these suggestions can be accepted but only if it is agreed by all the entities that PNGRB will simply encash existing PBG if renewed PBG is not submitted before the stipulated time without referring/ reminding entities for submission of renewed PBG which at times PNGRB does. Most of the entities were in agreement. However, entities were asked to submit their written response on this issue.

Regarding claim period, PNGRB clarified that since entities have to submit renewed PBG before the expiry of existing PBG, no claim period is mentioned in the PBG format. PNGRB advised entities to submit written response on the issue. PNGRB stated that the original PBGs are being returned currently also and would be returned in original at the earliest possible, in future also.

9. GAIL Gas Limited, w.r.t. regulation 11, clause (3), conveyed that the period of 270 days for achieving financial closure may be extended in specific cases where NG pipeline connectivity and gas allocations are not achieved, for example in GAs of North East.

It was clarified by PNGRB that in the proposed provision, gas supply agreements/ gas allocation has been delinked with FC.

10. Regarding proposed regulation 11(4)(b)(iv) and at sl. no. 7 of the table in Schedule K, Gujarat Gas Limited suggested a draft for document required from a non-company promoter which should be binding declaration and undertaking committing the investment. Clarus Law Associates has also brought out that in case of individual promoters also, PNGRB should seek some binding document equivalent to Corporate Guarantee. In this regard, PNGRB requested Clarus Law Associates to advise as to what documents should be sought by PNGRB from an entity, promoted by individual promoter(s) or non-company promoters.

Regarding proposed regulation 11(4)(c), AG&P conveyed that since the sanction is approved by the highest committees in the bank/ financial institution the time period of 270 days may be restricted to taking the firm sanction only and not legally binding documents. Adani Gas stated that in case PNGRB requires signed loan documentation, additional period beyond 270 days be provided. Gujarat Gas Limited further requested that point no. (c) of clause (4) of regulation 11 seems incomplete as it ends with "From". PNGRB mentioned that it will review this incomplete sentence.

PNGRB clarified that in the proposed regulation 11(4)(c), in case of borrowings from bank/ financial institution, only firm sanction order has been sought. Legally binding loan

agreement(s) has been sought in case of loan from promoter(s)/ associate(s)/ Director(s). The language of the proposed provision will be reviewed.

Regarding proposed regulation 11(4)(d), entities said that since lending banks are already evaluating the cash flows, PNGRB may not seek this information. However, AG&P favoured to have this clause. IGL and Gujarat Gas Limited raised a concern that since the CGD entity shall be providing approval of its Board of Directors for the DFR to be submitted to PNGRB, there is no rationale for seeking year-wise projected cash flows.

It was clarified by PNGRB that in the proposed regulation 11(4)(d), cash flows of the entity for next 5 years have been sought only in those cases where the entity has proposed that project cost planned to be funded from internal accruals of the GA or other activities of the authorized entity. Incidentally, in such case, banks would not evaluate the proposal as no borrowing is proposed.

However, the entities were advised to write their views to PNGRB which will be reviewed by PNGRB.

11. Regarding the submission of DFR as required in the proposed regulation 11 (4) (a), entities including IGL and Adani Gas requested the Board to reconsider the submission of DFR to PNGRB as an acceptance of the achievement of FC. The entities conveyed that this may result in two different version of DFRs, with varied costs, since one will be evaluated by the lender's engineer, who would always want to show lower costs. AG&P on this conveyed that PNGRB as a regulator needs to ensure the readiness of the entity, and hence DFR submission is essential. It was clarified by PNGRB that DFR is required to know the fund requirements for first five year of GAs.

12. Gujarat Gas Limited w.r.t. the omission of clause (1) and clause (2) of regulation 11 of the proposed draft relating to GSA, requested PNGRB to retain them since it is important to impose certain compliance parameters/timelines to ensure that the upstream Gas Suppliers/marketers timely execute the Gas Supply Agreement with the authorized CGD entities for the domestic gas allocation in order to ensure faster development of CGD network. PNGRB in this regard commented that the change is CGD friendly and the issue may be further discussed among entities whether they want to retain these provisions. Entities were advised to submit their views to PNGRB in writing.

13. Regarding the proposed insertion of a proviso after the third proviso in the present regulation 12 (2), entities including Adani Gas, GAIL Gas Limited, IOCL and Shell Energy India Pvt. Ltd. stated that the provision to source natural gas for a GA with LNG terminal as a source shall be for a temporary basis and that the gas shall be sourced from the trunk pipeline after it is operational in the GA's proximity. Adani Gas further conveyed that existing provision on extension of MWP and exclusivity may be continued with provisions on recognition of virtual pipeline in case entity opts for setting up small scale LNG plant in the GA not having pipeline connectivity. Further, AG&P in this regard suggested that in GAs which have no scope of trunk pipeline, the entities shall be made aware of this fact at the time of bidding that their MWPs will be based on LNG. Further, it requested that the

entity shall be free to choose the source LNG terminal as per its overall to facilitate faster reach. To this, PNGRB clarified that the bid document would be specifying that the source of natural gas for a particular GA shall be the specified LNG terminal, and the word “existing” shall be removed from e (i) of regulation 12 (2) so as to cover upcoming LNG terminals also.

14. W.r.t. proviso no. 3 of regulation 12 (2), Gujarat Gas Limited conveyed that apart from the delay made by the natural gas pipeline entity in flowing the natural gas, any delay on account of providing transmission pipeline connectivity to the CGD entity shall also be liable for extension in the exclusivity period for exemption from the purview of common carrier or contract carrier. GAIL Gas Limited w.r.t.. readiness of CGD network suggested that any of the four criteria proposed should be applicable after 180 days once the NG pipeline connectivity has been established and for the operation of at least one CNG station within the authorized GA, domestic gas must be allocated to operate that particular CNG station.

15. Indian Oil Corporation Limited, Gujarat Gas Limited and Indraprastha Gas Limited w.r.t. regulation 12 (2): Explanation 2, have suggested that the word “operation” may be replaced with “commissioned” of at least one CNG Station. Further, IOCL w.r.t. point (a) of Explanation 2 suggested that it should be modified as “At least one CNG Station within authorized geographical area should be mechanically ready for commissioning”. It was clarified that the intent of PNGRB was to have an operational CNG station.

16. W.r.t. the proposed regulation 16-A, most of the entities including GAIL Gas Limited, Gujarat Gas Limited, Adani Gas Limited and Indraprastha Gas have requested PNGRB not to incorporate the same. PNGRB advised that it was brought at the request of entities as they were facing issues with financial closure. However, AG&P was in favour of retaining this clause as is the practise in NHAI and certain other sectors.

17. ONGC requested that domestic producers or its direct marketing consumers should be kept outside the purview of CGD Regulation, 2008. Further, it also requested that CGD entities should mandatorily participate along with other interested bidders in gas sale tenders from fields of all domestic producers including DSF. In case, CGD entity does not win the tender, then sub-regulation 3(2) (a) of PNGRB CGD Regulation, 2008 should not be applicable.

18. In view of the above, the concerned entities are requested to share their experience and suggestions regarding the relevant issues, if any, as invited by PNGRB at para 8 and 16 of these minutes, which may be emailed to secretary@pngrb.gov.in with a copy to rkshahi@pngrb.gov.in, latest by 02.07.2020.

The meeting concluded with a vote of thanks to the Chair.

LIST OF ATTENDEES IN THE VIDEO CONFERENCING

PNGRB

1. Shri D.K. Sarraf, Chairperson
2. Shri Satpal Garg, Member
3. Ms. Vandana Sharma, Secretary
4. Shri Arvind Kumar, Additional Adviser
5. Shri Pankaj Bhutani, Joint Adviser
6. Shri K. Kittappa, Joint Adviser
7. Shri Anil Kumar Garg, Joint Adviser
8. Shri S.C. Gupta, Deputy Adviser
9. Shri Md. Tanweer Akhter, Deputy Adviser
10. Shri U.S. Sahay, Deputy Adviser
11. Shri A.K. Atreya, Deputy Adviser
12. Shri Khaja Mohideen, Deputy Director
13. Shri Rakesh Kumar Shahi, Assistant Adviser
14. Shri V.K. Saxena, Consultant
15. Shri Sharique Hussain, Assistant Consultant
16. Shri Pathak Maharshi, Assistant Consultant
17. Ms. Shipra Malhotra, Assistant Legal Consultant

Stakeholders

1. Adani Gas Limited
2. Atlantic Gulf & Pacific Company of Manila
3. Clarius Law Associates
4. Oil and Natural Gas Corporation Limited
5. GAIL Gas Limited
6. Gujarat Gas Limited
7. H-Energy Private Limited
8. Indraprastha Gas Limited
9. IMC Limited
10. Indian Oil Corporation Limited
11. Mahanagar Gas Limited
12. Shanti GD Ispat and Power Group
13. South Asia Energy Services Private Limited
14. Torrent Gas Private Limited
15. Think Gas Distribution Private Limited
16. GRM Hospitality and Consultants Private Limited
17. Hindustan Petroleum Corporation Limited
18. Shell Energy India Private Limited
19. Jindal Aluminium Limited