Shell Energy India Private Limited
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SEI/MC/2019/PNGRB/PCD/05
26 August 2019

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

Subject: **Comments on the proposed amendment to the PNGRB (Determination of Natural Gas Pipeline Tariff) Regulations, 2008.**

Respected Madam,

This has reference to the public notice (ref: No: PNGRB/COM/2-NGPL Tariff (3)/2019) soliciting views on the proposed amendment to the PNGRB (Determination of Natural Gas Pipeline Tariff) Regulations, 2008. Please find below our views and comments on the proposed amendment.

The proposed amendment provides an option for determination of transportation tariffs on a combined basis for two or more inter-connected Natural Gas Pipelines by PNGRB considering various objectives including encouraging consumption of natural gas, efficiency and economic use of resources, safeguarding the overall consumer interest, securing equitable distribution of natural gas and minimising the impact of additive transportation tariff vis-à-vis tariff determined on a combined basis. This amendment enables determination of the integrated tariff for all inter-connected pipelines including all regional and low-pressure pipelines except the bid-out pipelines.

We support the concept of integrated tariff as it enables the creation of economically viable infrastructure and the development of gas markets. The integrated tariff will rationalize the pipeline transportation costs for all segments of customers irrespective of their location and path of connectivity to gas source. It will also facilitate development of new pipelines and connecting new demand centers as the increase in the gas demand will negate the overall impact of tariff on consumers in the long-term. We request the honorable Board to consider the following inputs for fully realizing the anticipated benefits of the integrated tariff while protecting the interests of consumers by fostering fair trade and competition amongst entities.

1. To ensure non-discriminatory and seamless operations of the integrated pipelines system, it should be operated by an autonomous entity such as POSOCO for power transmission grids. A national gas bulletin board should be developed to enable all players to access the necessary data of the national pipeline grid including pipeline tariff, capacity utilization and availability (day ahead, week ahead and month ahead basis). Such digital platform would ensure booking of capacity by shippers and consumers on a fair, non-discriminatory and transparent manner.

2. The Gas Transportation Agreements of all Transporters should be synchronized and a standard GTA should be developed. The GTA should enable access to the third-party shippers on the network with flexibility to choose entry and exit points. It should allow capacity booking in pipelines on "Reasonable Endeavours" basis i.e. without any ship-or-pay liability for the shippers and penalties for the transporters. Further there should be no restrictions on the minimum contract duration or on the start and end date of the contract. This mechanism will help the consumers in power, industrial and CGD entities who procure spot RLNG on short term basis to meet their fluctuating gas demand without facing the penal provisions such as imbalance and overrun. A draft note is enclosed (Annexure 1) addressing the misconceptions and benefits for all stakeholders. We request the honorable Board to initiate a separate public consultation process on this subject as soon as possible.
3. We recommend that the honorable Board to ensure the implementation of the existing PNGRB Regulations *"Affiliate code of conduct for entities engaged in marketing of natural gas and laying, building, operating or expanding natural gas pipeline"* prior to operationalizing the integrated tariff for all consumers. This will provide non-discriminatory access to the pipelines to gas marketing companies and gas customers in a transparent manner leading to the development of new markets and growth of existing gas markets as the consumers would be able to source natural gas at the most competitive rates from multiple suppliers.
4. We recommend the Board to suitably modify the existing methodology for determination of Natural Gas Pipeline Tariff by introducing appropriate metrics for incentivizing efficient and timely development of pipelines by the pipeline entities as the integrated tariff limits demand risk vis-à-vis the present system.

We also request the honorable Board to develop a suitable mechanism for bringing the bid-out pipelines under the integrated system to avoid market distortions.

We will be happy to provide any further information if required.

Your Sincerely,
For **Shell Energy India Private Limited**

Ashwani Dudeja
Director and Chief Commercial Officer

Annexure 1

Note - Capacity Booking on Reasonable Endeavours Basis (RE Access)

1. **Background**

The PNGRB Act and other existing regulations aim at achieving the twin objectives of protecting the interest of consumers by fostering fair trade and competition amongst the entities and enabling growth of natural gas markets in the country. However, it has been observed that the current pipeline access provided by transporters is not fully aligned with the requirements of the Indian market and objectives of the PNGRB Act. In this context, we would like to submit our observations and recommend modifications to achieve the regulatory objectives envisaged in the Act.

The existing regulations provide for booking of available common carrier capacity by any entity, at any given point, on a non-discriminatory "first-come-first-served' basis. Such entities are required to enter into contracts with transporters on other terms and conditions as may be mutually agreed subject to the Act and other regulations notified from time to time.

Standardization of the terms of access arrangement would ensure access on a non-discriminatory basis and foster fair trade and competition amongst all shippers, which is paramount for protecting the interests of consumers by way of ensuring access to multiple shippers and provide freedom to consumers to purchase gas from any supplier at the most competitive price. While the master Gas Transportation Agreements (GTA) offered by the pipeline companies offer standardized terms, the transporters are in a position to offer either bundled contracts (combined capacity and commodity) or separate contracts but absorbing the risk of the mismatch between capacity and commodity contract, thereby having an unfair advantage over other potential suppliers. The potential abuse of a dominant position by pipeline companies may lead to restrictive trade practices and have an adverse impact on development of deep and liquid gas market in India.

2. **Rationale for RE Access:**

1) Most of the Indian gas consumers prefer securing 10-30% of gas supply on RE terms (i.e. 70-90% Take or Pay) and for varying contract durations to manage the variability on demand and supply (domestic) sides. The standard "Ship or Pay" charges under the GTA (Ship or Pay CT) is set at 90%. This mismatch between the commodity and capacity contracts creates a risk of 10-20% which can be absorbed by the pipeline companies when they are also the gas supplier while other suppliers have to price this risk of mismatch thereby making their offers uncompetitive and providing an unfair advantage to the pipeline company to be the gas supplier. It may also be noted that non-availability of RE access adversely impacts the growth gas demand in the country as most buyers (or shippers) would prefer a conservative approach of booking lower capacity in order to avoid paying penal charges leading to lower gas consumption than they potentially could have. A sector wise analysis below builds the argument of RE pipeline access:

   a. **Fertilizers:** The above risk is much more profound for the quarterly Fertiliser tender for RLNG run by GAIL as pool operator on behalf of the EMPC. As per the terms of the tender, the supply of RLNG has to be made on a delivered basis to different fertilizer plants and on RE Basis, i.e. 0% Take-or-Pay Charges. This provision puts third-party shippers at a significant commercial disadvantage vis-à-vis transporters who also participate as RLNG supplier. Provisions for RE Capacity in GTA will provide an equal opportunity to all suppliers and enable supply of gas at competitive prices.

   b. **CGD**: CGD companies across the country also invite tenders on RE basis for different CT durations to meet their gas demands due to the variations in domestic gas supply and demand ramp-up. In addition to the hourly fluctuations (CNG), the expanding CGDs (both new and existing) are exposed to a much higher degree of variation in the gas demand. Further, the gas demand from the industrial segment is

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also very uncertain as they prefer supply on RE basis for retaining the operational flexibility. Provisions for capacity access on RE basis will not only lead to a reduction in the cost of gas for CGD companies but also contribute towards the expansion of gas demand in the industrial segment.

c. **Power:** Gas based power plants need gas supply on RE basis to improve the economics for power generation and to meet the timelines of power exchanges (intra-day) as well as for the peaking requirement under the merit order dispatch instructions from State Electricity Boards. If RE capacity is allowed in the GTAs, then gas-based power plants will be able to submit competitive bids on the exchange and avail pipeline capacity to the extent required. This will not only lead to higher gas consumption in the power sector but also help in reviving stranded gas plants in addition to the other initiatives that are being considered by the Government.

d. **Industrial:** Industrial customers also prefer to procure 20-30% of their gas requirement on RE basis for managing variability in demand and operational needs. While gas suppliers have been offering RE gas supply, these industrial consumers are forced to book pipeline capacity on 'Ship-or-Pay' basis as RE CT is not offered by the pipeline companies. Availability of RE capacity will not only result in lower gas purchase cost and but also enable them to maximise gas offtake vis-à-vis other alternative fuels by providing more flexibility in managing their fuel demand.

2) While the customers were offered capacity booking on RE basis until 2015, as of now, the transporters offer common carrier capacity to third-party shippers only on a firm basis with 'Ship-or-Pay' commitment. However, a greater degree of flexibility may be possible to their direct customers and that penalties (such as ship or pay, imbalance and overrun) for not meeting such commitments may either be not applicable due to the bundled contract or may be relaxed subject to entering into separate commodity contracts for higher volumes and/or extended periods. Such offerings not only limit competition from other gas suppliers but also prevents the end-users a choice to procure the commodity at the most competitive prices prevalent in the market.

3) In the absence of strict implementation of the 'Affiliate code of conduct' for legal separation of marketing and transportation activities, a few entities may still be offering bundled products which invariably leads to cross-subsidization between the regulated (transportation) activity and the unregulated (marketing) activities in the absence of preventive guidelines from the PNGRB.

4) By not offering common carrier capacity on RE basis for various CT durations as required by gas users, the pipeline entities may have an undue competitive advantage vis-à-vis third-party shippers as an additional cost element in the form of risk of 'Ship-or-pay' have to be included in their bids whereas the pipeline entities mat be able to effectively supply gas to customers (esp. Fertilisers) on RE basis.

5) It may be noted that most of the consumer segments referred above are either government-owned companies or public listed companies with debt from banks and financial institutions. And some of the segments like Fertilisers are provided direct subsidy by the Government of India. By providing RE Access on pipeline, these companies will have a multiple choice of suppliers leading to competitive supply options which will result in the saving of public money.

3. Proposal for RE Capacity

In order to rectify the market distortions due to unavailability of the RE capacity, we recommend transporters to offer capacity on both firm and RE basis for any length of the CT as required by the shippers. The argument that RE capacity will result in the hoarding of pipeline capacity should be addressed by prioritizing of firm capacity. It may also be noted the reasonable endeavours in RE CT are equally applicable to the Transporter as they are to the Shipper i.e. Transporter is not required to schedule volumes under RE CT, if the capacity is not available.

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Firm Capacity – This capacity shall be booked on a firm basis, and Shippers shall be obligated to pay 'Ship or Pay' charges. Similarly, Transporter shall be obligated to pay the Capacity Relief Entitlement (CRE) for non-provision of services. Firm Capacity shall be allocated and scheduled before scheduling of RE Capacity.

RE Capacity – This capacity shall be booked by shippers on RE basis i.e. without any Ship or Pay obligation on Shipper or CRE on Transporter. The Transporter shall charge for actual capacity used by the Shipper. Transporter shall schedule RE Capacity on the basis of available pipeline capacity (whether common carrier or contract carrier) after scheduling of Firm Capacity to Shippers.

4. **Potential Concerns of Transporters**

We would also like to comment on some of the concerns that may be applicable to the transporters in providing access on RE basis.

- **RE access is mutual and not one-sided**
  - In the case of RE contract, neither transporter nor shipper gives assurance to each other on either allocation of capacity or utilisation of capacity.
- **RE access doesn't lead to blockage of capacity**
  - Transporters may have suggested that that allowing RE based capacity booking would set a wrong precedent as most of the shippers would be inclined to book common carrier capacities on RE basis and thereby blocking entities seeking capacity on a firm basis. Such a situation is hypothetical and unlikely to emerge as the firm capacity contracts are always prioritised over RE contracts at any point in time. For example, in case of EMPC tender, the same capacity can be booked by multiple marketers on RE basis, and whosoever wins the bid, transports its gas to the end consumer and there shall be no blockage of capacity.
- **RE access would results in higher tariff and dis-incentivises investments**
  - Another apprehension about RE based capacity booking is that it may lead to higher tariffs and potentially render investments in pipeline business unattractive in the absence of assurance on the utilisation of capacity. The shippers who would want assurance on capacity allocation would anyway book capacity on a firm basis and by allowing RE booking will only increase the utilisation of the pipeline as shippers could offer additional volumes at the most competitive rates in the absence of an additional risks in the form of Ship-or-pay' obligation and other penal charges prescribed in GTA. In any case, PNGRB regulations don't envisage charging transportation tariff for unutilised capacity.

In order to promote usage of natural gas, the supply of gas needs to be offered on commercial terms so as to compete with alternative fuels and also meet the operational flexibilities of customers' requirements. Higher gas demand / consumption will ultimately lead to higher pipeline capacity utilization leading to lower pipeline tariffs in future. Stringent commercial terms such as 'Ship or Pay' will negatively impact the growth of gas demand in the country. Gas suppliers have been offering flexible commercial terms in line with the requirements of the consumers, but it needs to be supported by similar flexibilities in gas transportation agreements.

We would like to request PNGRB to review our proposal and amend the access code regulation in order to ensure that all shippers can access pipelines on fair and non-discriminatory terms and compete in a market environment which is (a) free of restrictive trade practices; (b) provides a level playing field to all gas suppliers including the transporter; and (c) provides freedom to the end users to choose gas supplier of their own choice at the most competitive terms and price.

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