Dear Sir,

We have reviewed the draft regulations titled “Petroleum and Natural Gas Regulatory Board (Registration for Establishing and Operating Liquefied Natural Gas (LNG) Terminals) Regulations, 2018” (the “Draft Regulations”) that have been proposed by the Petroleum and Natural Gas Regulatory Board (“Board”) pursuant to the powers under Section 61, Petroleum and Natural Gas Regulatory Board Act, 2006 (“Act”). We refer to our previous letters dated 3rd April 2009, 29th April 2009, 9th July 2009, 17th January 2014 and our presentations made to the Board on 27th July 2012 and 21st April 2014. Further to the aforesaid communications we have the following suggestions and comments to offer:-

A) Suggestion on Clause 3 (1) :-

We appreciate that the Draft Regulations recognizes that no registration under the Act shall be required for any entity carrying on the activity of establishing or operating a liquefied natural gas terminal immediately before the Board was established under the Act in line with Section 15(1) (c) of the Act. However, it is our suggestion that in order to avoid any ambiguity with the provisions of the Act, we submit that Clause 3 (1), Draft Regulations may be amended by adding a similar proviso as provided in the Act as under:

‘Provided that no registration under these Regulations shall be required for any liquefied natural gas terminals which has already been established and in operations immediately before the appointed day referred to Act.’
B) Comment on Clause 3 (1) (a) :

We respectfully submit our concerns regarding common carrier capacity access to LNG terminals under two broad categories, (i) operational constraints in enabling common carrier access to LNG terminals and (ii) inconsistencies between the Draft Regulations and the Act.

Operational Constraints
1. The Draft Regulations prescribe that LNG terminals need to offer at all times 20% of its short term uncommitted regasification capacity as common carrier capacity. We would like to draw the attention of the Board to the fact that there are significant operational challenges in affecting such provisions in practice. Unlike natural gas pipelines where gas molecules flow on a continuous, comingled basis and a portion of a pipeline's capacity can be easily earmarked as common carrier capacity, the LNG value chain is significantly more complex comprising of several discrete components that need to act in unison to operationalize the whole value chain. At the outset, an LNG regasification terminal receives cryogenic shipments of LNG in the form of discrete cargo lots, which is limited by the marine berthing capacity of the terminal. Thereafter, LNG is unloaded into cryogenic tanks which have a finite storage capacity, which typically tends to be the most significant constraint for any LNG terminal. Next, LNG is vaporized to its gaseous form and there is a finite capacity limit on the vaporization capability of the terminal and finally the capacity limitation of its send-out pipeline which connects an LNG terminal to broader gas pipeline grids in the country.

2. Each element of the LNG value chain has its own unique challenges and uncertainty levels associated with it, which ultimately creates ambiguity on the practical definition of available capacity of the LNG terminal at any given time. For instance, due to the long shipping distances from LNG loading ports to a receiving terminal spanning thousands of nautical miles, weather conditions induced delays and frequent adjustments to scheduled arrival windows of LNG carriers are quite common. In the ensuing scenario, with frequent changes to scheduled arrival windows for LNG carriers, it is difficult to offer common carrier access to the LNG terminal as the berthing capacity may be constrained for access.

3. More importantly, the access challenge is substantially magnified due to the mismatch in finite storage capacity of the terminal and the need to maintain continuous send-out to create the requisite ullage in the limited storage capacity to accept subsequent cargoes. The send-out pattern from a terminal varies significantly in response to fluctuations in demand from end users leading to mismatch between customer’s daily offtake requirements and optimum send out required by the terminal. At any given time, an LNG terminal holds different titled stocks of multiple customers and the offtake pattern of each customer varies according to their respective end-user requirements. Hence, even assuming that there is some spare capacity in vaporization and send-out capability of the LNG terminal at any given time, common carrier access cannot be maintained at all times as the LNG inventory is yet to be cleared out from the storage tanks.
4. To make the matters more complicated, there are significant variations in LNG carrier sizes. With the advent of Q-Flex and Q-Max ships, the holding capacity of LNG carriers has doubled. These variations in ship sizes create additional complexities in offering common carrier capacity access to a LNG terminal as scheduling will be difficult, unless done well in advance. Further, at times, with different density levels of LNG sourced from different countries, there is a stringent safety requirement to segregate LNG storage of varying densities in different tanks to prevent a catastrophic LNG inversion risk in a tank even though there may be some spare ullage in that tank at that juncture.

5. The above referred examples clearly illustrate that unlike natural gas pipelines, common carrier access principles are not readily applicable to a LNG terminal as the capacity of the LNG terminal itself is a function of its separate, discrete components across marine berthing limitations, storage limitations and variability in demand from end users, further complicated by various LNG carrier sizes and quality constraints of LNG. LNG terminal operators manage all these complex logistics on a day to day basis and are better positioned to offer negotiated access to customers taking into account all the components of the LNG value chain.

**Inconsistencies between the Draft Regulations and the Act**

We also submit that the Draft Regulations seek to make it mandatory for liquefied natural gas terminals to offer at all times 20% of short term (less than 5 year contract) uncommitted regasification capacity or 0.5 MMPTA, whichever is higher as common carrier capacity. In other words, the Regulations are creating the basis for "Third Party Access" ("TPA") to liquefied natural gas terminals which are established or operating after the Appointed Day – as the Act envisages TPA, under Section 11(e) (i) of the Act for the Board to: "Regulate, by regulations, -

- access to common carrier or contract carrier so as to ensure fair trade and competition amongst entities and for that purpose specify pipeline access code;
- transportation rates for common carrier or contract carrier;
- access to city or local natural gas distribution network so as to ensure fair trade and competition amongst entities as per pipeline access code;"

As liquefied natural gas terminals are not included within the definition of common (or contract) carrier, it is our submission that if the Draft Regulations seek to bring within its ambit liquefied natural gas terminals which are established or operating after Appointed Day, it would mean that principles of TPA, that are applicable only to gas pipelines/networks pursuant to the Act, have in essence been imposed on liquefied natural gas terminals which would be inconsistent with the legislative intent of the PNGRB Act, 2007.
C) Comments on Clause 2 (c):-

It is also submitted that under Clause 2 (1) (c) of the Draft Regulations the term ‘liquefied natural gas terminal (LNG terminal)’ has been redefined. We respectfully state that the said term has already been defined in the PNGRB Act, 2006. Hence the deletion of Clause 2 (1) (c) of the Draft Regulations may please be considered.

D) Comments on Clause 5:-

On the specified period of initial registration (25 years) and subsequent extensions (10 years) as set out in Clause 5 of the Draft Regulations do not appear logical. Once an entity is registered and the asset has been created – the registration should be valid as long as the asset is operational. The requirement for periodic renewal of registration, without disclosing upfront, categorically and unequivocally, the circumstances under which such renewal can be denied, will be seen as a risk by the investors.

E) Comments on Clause 6 and 8:-

Further as regards, Clause 6 (1) of the Draft Regulations which deals with ‘Change of Ownership’, we respectfully submit that the proposed provision is ambiguous and hence the rationale/intent behind this provision is not forthcoming. Hence, we request that the rationale/intent of this proposed provision may be please clarified. Further as regards to Clause 6 (2) the language ‘the Board may amend’, the word ‘may’ would amount to imply that the Board may in its discretion grant or refuse to grant an amended certificate. We request that this provision may also be re-examined by the Board.

Similarly there are concerns around Clause 8 of the Draft Regulations which deals with ‘Suspension or Termination of Certificate of Registration’, particularly when there is significant ambiguity in defining uncommitted capacity for an LNG terminal as outlined in the above-referred Section B.

F) Other comments:–

At a point in time when the stated policy of the Government of India ("Gol") is to encourage foreign investments in the energy sector, a case in point being 100% Foreign Direct Investment being permitted for investments in liquefied natural gas terminals under the automatic route, the Regulations would only serve to place an additional regulatory hurdle to new investment. The concept of mandatory TPA to new-build terminals has been tried in the United States (US) and European Union (EU) and the regulators in those jurisdictions have found that new investments were not forthcoming unless exemptions/derogations were provided. The Hackberry decision of the Federal Energy Regulatory Commission, United States (FERC, US) dated 18th December 2002 had done way with common capacity access to LNG terminals, as FERC found that the compliance to common capacity access policy created tremendous uncertainty for LNG project developers. Similarly, in Europe the standard competition test which was developed in Ofgem in the United Kingdom was used by the regulatory authorities while considering grant of exemption to common capacity access to LNG terminals. The regulatory bodies US, EU and UK did find that common capacity access to LNG terminals would lead to more risks to the LNG terminal investors.
The Draft Regulations proposed by the Board, therefore, should be seen within the context of its likely impact on the competition and also to attract investment in the industry.

In the light of the aforesaid submissions/comments, please consider this response on the subject Draft Regulations as a preliminary submission and we request the Board to provide us with an opportunity for hearing us in person before any further steps are taken on these Draft Regulations. In the event the Board wishes to seek any clarifications from HLPL on the Draft Regulations, we will be happy to assist the Board in this regard.

Yours faithfully,

Rahul Deep Singh
Managing Director