

PNGRB: KOCHIATF

20.09.2024

To,

Petroleum and Natural Gas Regulatory Board,
First Floor, World Trade Centre,
Babar Road, New Delhi-110 001.

Kind Attn: **Ms. Vandana Sharma, Secretary**

Dear Sir,

Subject: (i) PNGRB's Public Notice No. PNGRB/Auth/3-PPPL(08)/2024(E-5096) dated 21.08.2024 issued under Section 20 of the PNGRB Act, 2006 calling for objections and suggestions with respect to proposed declaration of BPCL's Kochi Refinery ATF Pipeline as a common carrier/contract carrier.

(ii) Objections of BPCL with respect to the above said Notice.

This is with reference to the above captioned Public Notice dated 21.08.2024 (hereinafter referred to as "the said Public Notice"). Bharat Petroleum Corporation Limited (BPCL), the owner of the ATF Pipeline emanating from the Kochi Refinery to Kochi Airport (hereinafter referred to as "the said ATF Pipeline") is filing the present preliminary objections opposing the proposed declaration of the said ATF Pipeline as a common carrier/contract carrier.

1. Ministry of Petroleum and Natural Gas ("MOPNG") on 20.11.2002 issued Guidelines, in public interest, for laying of Petroleum Product Pipelines ("2002 Guidelines").
 - 1.1 As per the 2002 Guidelines, for pipelines originating from refineries, whether coastal or inland, up to a distance of 300 KM from the refinery, ROU inland for laying petroleum pipelines was granted in favour of companies treating such pipelines as captive pipelines i.e., for exclusive use by the proposer company. MOPNG thereafter issued Supplementary Guidelines for laying Petroleum Product Pipelines on 26.10.2004 ("Supplementary Guidelines").
 - 1.2 DFR (Detailed Feasibility Report) of BPCL's Kochi Refinery ATF pipeline was approved in the year 2008 as a captive pipeline/pipeline other than common/contract carrier exclusively for BPCL's use. The construction work of the pipeline was started in the year 2009 and the same was completed in the year 2012. The pipeline was commissioned in the year 2013.
 - 1.3 The subject pipeline was conceived as a pipeline exclusively for BPCL's own use for evacuation of ATF production from its Kochi Refinery. The length of the subject pipeline is 34 KM with pipeline diameter of 8 inches. The approved capacity of the pipeline is 0.6 MMTPA (100 Kl/hr).



विपणन कार्यालय: नया ब्लॉक कार्यालय, बीपीसीएल शिवड़ी 'के' कॅम्पस, शिवड़ी फोर्ट रोड, शिवड़ी (पूर्व) मुंबई - 400015. फोन: 022-2417-6050 / 6090
रजिस्टर्ड ऑफिस: भारत भवन, 4 & 6, करीमभाय रोड, बेलार्ड इस्टेट, पोस्ट बॉक्स क्र. 688, मुंबई-400 001.

- 1.4 This pipeline is vital for the Kochi refinery of BPCL for timely evacuation of ATF which in turn helps in optimum production and operation of Kochi Refinery as this is a major mode for evacuation of ATF from the refinery.
2. The premise in the Public Notice that Regulations 4, 17, 18 of the PNGRB Authorization Regulations, 2010 require entities to approach PNGRB for authorization is not applicable to the said ATF Pipeline, it being a captive/self-use pipeline of BPCL.
3. The said Public Notice dated 21.08.2024 is ultra vires the provisions of the PNGRB Act, 2006 and also issued in violation of various Judgments of the Hon'ble Supreme Court of India, High Courts and APTEL. Further, the Public Notice has been issued in the absence of Member (Legal) and without fulfilling the quorum requirements and is therefore void ab initio. Considering that complex legal issues are involved and any decision taken by PNGRB in terms of Section 20 of the Act may adversely affect BPCL, the presence of Member (Legal) is mandatory and the Board could not have issued the Public Notice without a Member (Legal) being appointed to the Board and without his/her participation in the decision to issue the Public Notice.
4. It is also submitted that the objectives laid down in Section 20(5) of the Act would also not be met by declaring the said ATF Pipeline as a common/ contract carrier. Further, no principles have also been laid down by the Board by any Regulations for carrying out of its functions under Section 20.
5. Declaration of the said ATF Pipeline as common carrier would hamper optimum evacuation of product from BPCL's Kochi Refinery. Therefore, it is not in the interest of any entity but in fact would be detrimental to the interest of BPCL if this pipeline is declared as common carrier pipeline. Reserving capacity in this pipeline for a third party will have an adverse effect on refinery operation as well as product availability.
6. It is also relevant to highlight to the Board that after the asset has been created and business risk taken by BPCL, such attempt to declare the pipeline, as common carrier would be against BPCL's interest. In fact, similar business models have been set up by various players in other industry segments for positioning of their products thereby encouraging competition and benefitting the public at large.
7. It is understood that PNGRB has the authority to authorise laying of any new common carrier/ contract carrier pipelines. Therefore, if PNGRB is of the view that competition has to be encouraged, it should ideally follow the process prescribed under the Act and Regulations framed thereunder in terms of Regulations 4, 17 and 18 and not declare BPCL's Kochi ATF Pipeline as captive/ self-use pipeline as common/ contract carrier.
8. That even otherwise, there is no spare capacity in the subject pipeline. The present capacity of the Kochi ATF Pipeline is 0.6 MMTPA out of which the entire capacity is already being utilized by BPCL for its own requirements. The current ATF Production of Kochi Refinery is 0.72 MMTPA and after full utilization of the capacity of the said ATF Pipeline, BPCL itself is evacuating the excess ATF produced in the Refinery through Tank Trucks for supplies to upcountry locations. Therefore, the pipeline is not capable or equipped to carry products of any other entity or third parties.

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9. The said ATF pipeline is for catering to BPCL's own requirement and is not a common/contract carrier or a pipeline which can be declared as common/contract carrier. The same is not equipped to carry products of any other entity or third party.
10. Further, Section 21(1) of the Act specifically provides as under:

"21. Right of first use, etc. :-

*(1) The entity laying, building, operating or expanding a pipeline for transportation of **petroleum and petroleum products** or laying, building, operating or expanding a city or local natural gas distribution network **shall have right of first use for its own requirement and the remaining capacity shall be used amongst entities** as the Board may, after issuing a declaration under section 20, determine having regard to the needs of fair competition in marketing and availability of petroleum and petroleum products throughout the country*"

The above provisions of Section 21(1) of the Act clearly show that the entity owning the pipeline has the first right to use the said pipeline for its own requirement and it is only **once the own requirements of the petroleum and petroleum products pipeline owning entity are exhausted only thereafter** any excess capacity, if at all available, can be considered for use amongst other entities. In other words, unless and until first the own requirements of the pipeline owning entity are fulfilled, there would be no question of any other entity being able to use the capacity of the subject pipeline. In the present case of the BPCL ATFP there is no excess capacity available as stated in the paras above.

11. PNGRB in the public notice have stated that *"The implementation of common carrier ATF pipelines is expected to reduce carbon emissions linked to ATF supply while ensuring a continuous and reliable supply at airports. It is also projected to decrease transportation and logistics costs associated with ATF supply to airports, benefiting all stakeholders, including air passengers, and complying with regulatory provisions within airport premises"*
12. PNGRB has not clarified in the public notice how they have arrived at the above conclusions. On the contrary if any third party brings ATF from some other refinery to Kochi Airport then it will add to carbon emissions as it will transport ATF Coastally or by Rail from their Refinery to Cochin. Further by declaring BPCL's Kochi ATF pipeline it is not clear how continuous and reliable supply is being ensured by PNGRB as BPCL is already meeting the ATF requirement of Kochi Airport, in fact, to achieve continuous and reliable supply (if deemed necessary by the PNGRB) through an additional source, PNGRB ought to go for an alternate pipeline if it wants to improve reliability. The logistics cost from coastal / jetty location to ATF cochin Airport is less than 1 percent of cost of ATF product and therefore will have negligible impact on cost of air ticket.

The public notice further proceeds on various erroneous assumptions in as much as firstly, storage facilities cannot be included in the definition of common carrier pipelines. Even otherwise, the storage of the subject pipeline is exclusively owned and



pipelines. Even otherwise, the storage of the subject pipeline is exclusively owned and used by BPCL for its own use and consumption. Furthermore, there is no available access or available capacity in the storage facility inside the Kochi refinery for any third-party product. Secondly, some of the reasons for seeking to declare the said ATF Pipeline as a common carrier as stated in the notice are beyond the scope and objects of the PNGRB Act itself as well as beyond the mandate of the PNGRB under the PNGRB Act.

13. Be that as it may, it is further submitted that the said ATF Pipeline has been designed and constructed prior to the PNGRB Act and Regulations coming into force and therefore in any event the pipeline does not have additional capacity built and envisaged for use by any third party. Expansion of the same is not possible due to the space constraints inside Kochi Refinery. Existing tankages inside refinery, for ATF are already limited and due to this limited storage facility, BPCL is facing severe constraints during tank maintenance/cleaning to meet stringent QC requirement of ATF product.
14. Even otherwise, in order to provide any connection/attachment /modification to the pipeline outside the Refinery premises, a suitable size of land has to be purchased/taken on lease to house isolation valves, metering units, process control facilities, etc. Currently BPCL does not have any land parcel between KR and Kochi Airport. This pipeline is passing through city and densely populated area and with no vacant space. Google map showing the pipeline route from Kochi Refinery to Cochin Airport is enclosed for ready reference as **Annexure-1**. It is also pertinent to mention herein that there is no other source for bringing in ATF in an around Cochin. The only source where ATF can be offloaded is the Jetty. The distance between Kochi Refinery and the Jetty is approximately 15 kms with the entire area being densely populated. Google image showing the location of the Jetty and the Kochi Refinery is enclosed for ready reference as **Annexure-2**. Therefore, there is no avenue for pumping in any product in the said ATF Pipeline from any other source except the Kochi Refinery, which is already producing more than the what the pipeline can carry. Principles of Section 21 of the Act clearly stipulate that the entity owning the pipeline has the right of first use. BPCL's right to use its own pipeline cannot be taken away by permitting third parties to pump in their product in BPCL's product to the detriment of BPCL.
15. Furthermore, the very objective of the PNGRB Act is to protect the interest of consumers and entities engaged in specified activities relating to Petroleum and Petroleum products. In the present case, the interest of the "consumer" is not at all furthered or strengthened by declaration of the said ATF Pipeline as a common carrier. On the contrary, as already submitted above, the same would be detrimental to the interest of BPCL which is an entity as per the definition provided in Section 2(p) of the PNGRB Act.
16. The final product produced at the Refinery needs to be evacuated immediately to support continuous smooth operations of the Refinery. Any restriction of access to the said ATF Pipeline will have severe impact on refinery production and it will lead to operational difficulties and financial losses to the company. Needless to mention, since the Refinery operations would be affected, it would inconvenience the consumers and also dent the earnings of BPCL and loss of public money at large.
17. ATF pipelines of BPCL are an integral part of BPCL's larger supply chain starting from Refinery and terminating at Marketing Terminals/Aviation Fuel Stations under specific



business model and hence cannot be viewed in isolation. The declaration of Kochi ATF pipeline as common carrier will disrupt the end-to-end business proposition of BPCL. BPCL, therefore, opposes the declaration of its captive/self-use pipeline as a common or contract carrier. Instead, BPCL suggests that PNGRB authorize the construction of new or additional common/contract carrier pipelines. This approach would better serve the public interest, promote competition, and fulfil the objectives outlined in the Act and the Public Notice. This suggestion aligns with requests from the Airline Industry and AERA to the Board, as mentioned in the fourth paragraph of the Public Notice, to enhance supply security by facilitating the development of multiple pipelines/operators.

18. As the said ATF Pipeline is originating from the Refinery from a logistical, safety and security point of view it will be unsafe to allow third parties to utilize this pipeline through refinery.
19. ATF Transportation cost for private/other players from Kochi City / Port to Airport by Road is negligible as compared to cost of ATF product and therefore there will not be any benefit to the end consumer. Furthermore, there is no entity which has any source of ATF in an around the Kochi Refinery. For any third party to pump in its product in the ATF Pipeline, it would have to transport the same by Trucks till the injection point. Given the fact that the pipeline is of a short length of only 34 kms, it is not practical or feasible or economical for any entity to first load its product on Trucks and thereafter instead of directly taking it to the Kochi Airport, offload the same within a vicinity of 30 kms of the Airport and then transport it through the subject pipeline. Therefore, even otherwise no objective as contemplated in the PNGRB Act is fulfilled. This is without prejudice to BPCL's submissions that even otherwise, the subject pipeline cannot be declared as a common carrier and that product of any third party cannot be pumped in the pipeline.
20. The said ATF Pipeline is not a natural monopoly as alternative modes of transport are available for such short distances.
21. Kochi refinery capacity has been expanded from 6 MMTPA to 15.5 MMTPA effectively utilising the space available and hence no further space is available inside the refinery. Further there are no spare tanks available to receive third party products in the Refinery. In case any capacity is reserved for any other entity, the evacuation of the product from the BPCL Kochi refinery would be adversely affected and in the absence of arrangement of other means of evacuation, the Refinery will have to take crude cut, i.e. reduction in production which will result in much more severe consequences for the public at large. Further, the future expansion of the Refinery would also be at stake.
22. In the facts of the present case i.e. firstly, there being no capacity available for any entity, secondly there being no scope of any expansion and thirdly, there being no scope of providing any connectivity to any entity to the said ATF Pipeline, no useful purpose would be served in declaring the said ATF Pipeline as a common carrier. To the contrary, it would be detrimental to the functioning of the Kochi Refinery and adversely affect productivity of ATF being produced at the Kochi Refinery as BPCL would be forced to evacuate its own product through Tank Trucks.
23. Moreover, Section 20(5) of the PNGRB Act contemplates that for the purposes of declaring a pipeline as a common carrier, the Board would be guided by the objectives



of promoting competition amongst entities, avoiding infructuous investment, maintaining or increasing supplies or for securing equitable distribution or ensuring adequate availability of petroleum and petroleum products throughout the country.

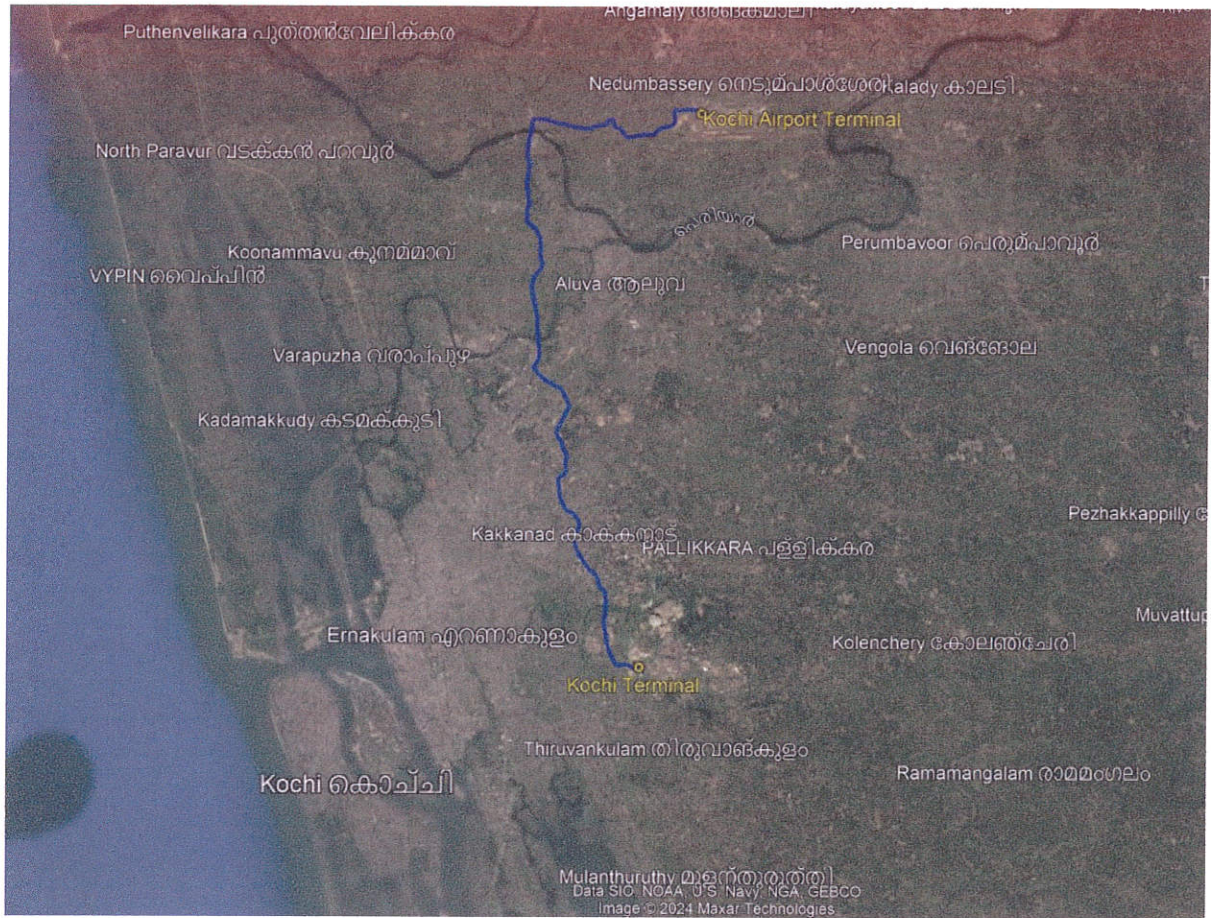
24. In light of the above factual background and submissions, it is evident that none of the principles/objectives enunciated in section 20(5) of the PNGRB Act would be achieved by declaring the said ATF Pipeline as a common carrier. Even if the said ATF Pipeline is declared as a common carrier, it would in no manner promote or provide equitable access for all market participants. There is nothing to suggest that declaration of the ATF Pipeline as a common carrier would lead to a more competitive market for ATF or for that matter potentially lower prices and/or improve service quality for end consumers including airlines and indirectly passengers. The same will not in any manner promote competition among entities or avoid any infructuous investment. No public interest exists for declaring the said ATF Pipeline as a common carrier.
25. BPCL therefore opposes the declaration of its captive/ self-use Kochi ATF Pipeline as common/ contract carrier and requests that the said Public Notice dated 21.08.2024 be withdrawn by PNGRB. BPCL also requests for a personal hearing if the PNGRB intends not to withdraw the Public Notice.
26. The submissions made above are preliminary objections/ views of BPCL. BPCL reserves its rights and contentions to file detailed submissions at the appropriate stage.

Yours faithfully,
For Bharat Petroleum Corporation Limited,


BIJU GOPINATH
ED (PIPELINES)

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कार्यपालक निदेशक पाइपलाईन्स
EXECUTIVE DIRECTOR PIPELINES

Annexure 1 - Pipeline Route



Annexure 2

