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Comments On The Draft PNGRB (Registration For Establishing & Operating Liquefied Natural Gas (LNG) Terminals) Regulations, 2018

1. Definitions

1.1 “LNG Terminal”

The term “on-land LNG Terminal” used in definition of LNG Terminal in Draft Regulation 2(1)(c) of the Draft Regulations, must be clarified to also include all LNG Receiving, Storage and Delivery Facilities established within premises of consumers or for delivery of LNG or Natural Gas for one or group of consumers or for delivery of LNG to the public.

There should be a recognition of the technology that will allow for distribution of LNG among consumers and general public and it should not be limited to only the large LNG Import Terminals.

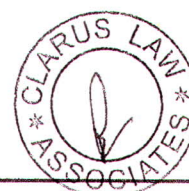
A category of “LNG Import Terminals” and “LNG Distribution Centres” and “Small Scale LNG Terminals” should be recognised.

This should also be harmonised with the definition of “LNG facility” provided in Regulation 2(1)(y) of the PNGRB (Technical Standards and Specifications including Safety Standards for Liquefied Natural Gas Facilities) Regulations, 2018, which defines “LNG facility” as :

“LNG facility” means a group of one or more units or facilities, that is, unloading or loading, storage, regasification, associated systems like utilities, blow down, flare system, fire water, storage and fire water network, control room and administration service buildings like workshop, fire station, laboratory, canteen etc.”

1.2 Definition of “Uncommitted Capacity”

The term “Uncommitted Capacity” defined in Draft Regulation 2(2), does not seem to be used anywhere in the Draft Regulations. The term used in Draft Regulation 3(1)(a) and the various schedules is “uncommitted re-gasification capacity”.



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Furthermore, the present definition of “uncommitted capacity” is vague. It is not clear how the “capacity of the LNG facility” will be determined. It is also not clear as to what the scope of the term is supposed to cover, specifically in terms of LNG Terminal.

1.3 New Definition of “LNG Tank Lorries”

A definition of “LNG Tank Lorries” should be included. The PNGRB (Technical Standards and Specifications including Safety Standards for Liquefied Natural Gas Facilities) Regulations, 2018, already stipulate standards for loading and unloading for LNG tank lorries.

Entities operating or intending to operate LNG Tank Lorries should also be required to register with PNGRB.

1.4 New Definition of “Small Scale Distributed LNG Networks”

A definition recognising “small scale distributed LNG networks” should be added. This will enable recognition, regulation and registration of entities seeking to establish distributed LNG networks across geographical regions allowing for delivery, storage, distribution of LNG and RLNG.

1.5 New Provision on Scope of Regulations should be introduced

A provision defining the scope of applicability of the Draft Regulations should be introduced. The Regulations should be made applicable to LNG Import Terminals, small scale LNG distribution networks, on-land LNG terminals, LNG dispensing stations for motor vehicles.

CGD entities that are developing LNG terminals and related infrastructure within their authorised geographical area need to be exempted from these regulations as they are already covered by their CGD authorisation and associated regulations.



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2. Application For Registration (Draft Regulation 3)

The presently proposed framework of Application in Draft Regulation 3 of the Draft Regulation only relates to registration of LNG Import Terminals.

A distinction between LNG truck based facilities being established within a geographical area of an authorised CGD entity and those outside a geographical area of an authorised CGD entity should be introduced.

A framework governing registration of LNG Terminals on land should be formulated providing for: (i) publicity of the application, (ii) disclosure of location and whether the location falls within a notified geographical area authorised to a CGD entity, (iii) NOC from the CGD entity or agreement with CGD entity for development of the LNG Terminal, (iv) interconnection of any existing CGD network with the proposed LNG Terminal.

A similar framework for registration of entities seeking to establish "small scale distributed LNG networks" should also be formulated. Where such networks are sought to be established in geographical areas already authorised to CGD entities, the agreement with the relevant CGD entity should be necessary, in light of the infrastructure exclusivity vested with CGD entities.

It should be noted under s.18 PNGRB Act, every application for registration for establishing and operating a LNG terminal is required to be publicised by the PNGRB.

The Draft Regulation 3 have to reflect the publicity requirement mandated under s.18 PNGRB Act.

The PNGRB (Technical Standards and Specifications including Safety Standards for Liquefied Natural Gas Facilities) Regulations, 2018, already stipulates the standards for designing of LNG Truck loading and unloading facilities. A corresponding requirement for the registration of all LNG truck loading and unloading facilities should be required.



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Entities operating or intending to operate LNG Tank Lorries should also be required to register with PNGRB.

CGD entities should be exempted from need to register LNG Terminals being developed by them under their CGD authorisation, as part of the CGD network.

Draft Regulation 3(1)(a) should be applicable only to "LNG import terminals" and not to small scale LNG terminals that are developed on land or as part of CGD networks.

The Draft Regulation 3 should be amended to also recognise and require the registration of entities seeking to install LNG fuel kits into automobile vehicles so as to regulate the quality and standard of such equipment and installation.

LNG Storage facilities installed for fuelling and operations of motor vehicles should be exempted from the scope of these regulations.

Draft Regulation 3(1)(a): "Common Carrier Capacity".

It is submitted that the concept of "common carrier capacity" is not possible to be introduced to a facility such as a LNG Terminal. Unlike a pipeline that is a single uniform infrastructure facility, a LNG Import Terminal comprises of four distinct types of infrastructure facilities namely: (i) port side facilities comprising of the LNG Jetty and associated facilities such as breakwater, port services etc.; (ii) LNG Storage Tanks and associated cryogenic pipelines, (iii) Regasification Facility and (iv) Regasified LNG (RLNG)/Natural Gas offtake gas pipeline system. At the same time On Land LNG Terminals or LNG Dispensing Stations are not conducive to imposition of a common carrier obligation.

Unlike a pipeline, whose capacity can vary between points and would have the ability to fluctuate, a LNG Terminal has a fixed LNG Storage tank capacity, which requires to have long term capacity commitments in order to be bankable and be financed. Other than the LNG Tanks storage capacity, there is no other "capacity" determinant for a LNG Terminal. However, in order to utilise LNG Terminal it is critical to reserve berthing slots for the LNG Tanker to dock. Simply seeking to require holding of "uncommitted capacity" in the LNG Tank is not going to achieve anything without corresponding regulation on allotment and use of berthing slots for LNG Tankers.



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The regulation of berthing slots in LNG Import Terminals is not contemplated under the PNGRB Act. Similarly extensive regulation of operations of various types of LNG terminals is not contemplated under the PNGRB Act.

Under the PNGRB Act, PNGRB has been vested with the specific power to declare certain pipelines as being "common carrier" pipelines and having the obligation to provide access on common carrier basis. There is no such corresponding power in relation to LNG Terminals under the PNGRB Act.

Even if PNGRB imposes the common carrier capacity on LNG Terminals, it would amount to acquisition of private property without due authority of law, that would be against the Constitution of India.

PNGRB would also need to assure the LNG Terminal developers of the return on their capital investment for the "common carrier" portion of the LNG Terminal capacity. However, PNGRB has no power to regulate "regasification charges" charged by LNG Terminals or other fees, hence, these regulations would amount to imposition of a direct loss of the cost of capital investment on the developers of LNG Terminals for the extent of the mandated "common carrier capacity". Therefore, the same would be open to challenge as it is not supported by any provision of the PNGRB Act.

There is no provision under the PNGRB Act, that mandates LNG terminals to offer , at the time of registration, 20% of its short term uncommitted re-gasification capacity or 0.5MMTPA, whichever is higher, as common carrier capacity; (ii) this is imposing a cost of almost Rs. 500 crores or more on LNG terminal entity as the capital cost of 0.5MMTPA would be atleast Rs. 500 crores. This will make LNG Terminals unviable; (iii) There is no provision under PNGRB Act to regulate capacity of LNG Terminals; (iv) PNGRB has no authority under PNGRB Act to impose common carrier capacity on LNG Terminals. PNGRB can only impose common carrier obligations only on pipelines. Thus, Draft Regulation 3(1)(a) is outside the scope of PNGRB Act and would be subject to legal challenge.

The provisions of Draft Regulation 3(1) (a) are making the registration of entity equivalent to authorisation, which is not the framework contemplated under the PNGRB Act and as such the draft provision is outside the framework of the PNGRB Act

Draft Regulation 3(1)(c): "Bank Guarantee".



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This needs to be re-evaluated. It is not clear as to why the guarantee is being given. There is no power under s.14 or 15 of PNGRB Act for PNGRB to demand such guarantee for only registration of particulars of entities developing and operating LNG Terminals. The duration of the guarantee is not clear. It is not clear when the guarantee could be invoked. Regulation 3(c) is outside the scope of the PNGRB's authority under the PNGRB Act and will be subject to legal challenge

If bank guarantee is being mandated, then the amount of bank guarantee will have to be changed for : (i) LNG Import Terminals, (ii) LNG small scale distribution networks, (iii) On land LNG terminals and (iv) LNG dispensing stations.

CGD entities establishing LNG terminals should be exempted from the scope of this provision and should not be required to submit any bank guarantee in light of their existing CGD authorisation.

The proviso to Draft Regulation 3(c), that stipulates separate applications for each LNG Terminal should be modified for entities seeking to establish on land LNG Terminals or "small scale distributed LNG networks", in respect of which instead of multiple applications, a comprehensive network application can be submitted.

3. Application Fee (Draft Regulation 4)

The application fee in relation to the registration as presently provided in the PNGRB Levy of Fees Regulation is Rs. 5,00,000/- per application. This may need to be modified and different fees for LNG Import Terminals, Small Scale LNG Distribution Network, On-Land LNG Terminals, LNG Tank Truck fleets, and LNG Dispensing Stations for Motor Vehicles may be needed.

Exemption for CGD entities establishing LNG facilities from payment of registration fees should be provided.

4. Certificate of Registration (Draft Regulation 5)

This needs to be re-evaluated. s.15 of PNGRB Act does not contemplate a *limited registration* for entities developing and operating LNG Terminals.

The registration under s. 15 PNGRB Act is a one time registration.



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The time period provided of 25 years for registration with only 10 year extension at a time, is too short for a LNG Import Terminals and will need to be different for LNG Import Terminals, Small Scale LNG Distribution Network, On-Land LNG Terminals and LNG Dispensing Stations for Motor Vehicles .

The usual economic life of a LNG Import Terminal is about 50-70 years. The consequence of the lapse of this registration is not clear.

In any event PNGRB cannot impose a limitation on the ability of an entity developing and operating LNG Terminal to undertake its business without due provisions in the PNGRB Act vesting it with such a right.

The present regulation does not provide any guidelines to govern the exercise of the discretion to grant the certificate or renew the same or not.

5. Change in Ownership (Regulation 6)

This should be limited to only instances when there is a change in entity owning the registered facility and not extend to change in "management control or any other such change in respect of the LNG Terminal". Change in Management and other types of change in corporate structure of the entity owning the LNG terminal are not within the scope of s. 15 PNGRB Act.

There should be an obligation on PNGRB to register any such change in ownership or management, as otherwise it may appear that PNGRB is seeking to regulate ownership or management of the LNG Terminals, which would clearly be outside the scope of PNGRB Act.

6. Suspension and Termination (Draft Regulation 8)

It is not clear what eligibility conditions are being referred to in Draft Regulation 8(1)(a), as a trigger to the suspension and termination. The consequence of suspension and termination of the registration is not clear.

Under s. 15 PNGRB Act, there is a requirement for an enquiry to be conducted and opportunity be provided to the entity to represent its case before any such action is taken. There has to be more detailed procedure and principles provided in relation to action of suspension and



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termination of registration. The due process for the enquiry, filing of written submissions, opportunity for detailed hearing etc. will have to be incorporated into the regulations.

CGD entities developing LNG terminals within their geographical areas, will have to be excluded from this provision.

The provision will have to provide for different consequences for LNG Import Terminals, Small Scale LNG Distribution Networks, On Land LNG Terminals, LNG Truck fleets, LNG Dispensing Stations.

The provision will have to clearly provide that LNG terminals being developed on-land within a geographical area of an authorised CGD entity, will have to be transferred to the CGD entities at commercial value/fair market value determined by a valuer. There will have to be distinction between LNG terminals pre-existing in areas before such areas became a CGD geographical area and those that were developed after the area was declared as a CGD geographical area. The performance of the CGD entity in implementation of its CGD network will also have to be evaluated in such a scenario.

The registration of LNG terminal and entities under s. 14 and s.15 PNGRB Act is not equivalent to licensing. The Draft Rules are seeking to expand the scope of registration of LNG terminal into that of licensing of LNG Terminal which is not the intent of the PNGRB Act. There is no power with PNGRB to attempt to regulate LNG Terminals as if it was authorising or licensing the LNG terminals.

A framework for resolving conflicts between entities operating LNG infrastructure and entities operating NG pipelines and CGD networks will have to be specifically provided for in the interests of growth of the sector.

7. Schedule I Information

The Schedules are presently drafted only for LNG Import terminals and will have to be changed for the various categories of LNG terminal mentioned above.

Furthermore, even for LNG Import Terminals, items (iii), (iv), (v) and (vi) would not be possible for LNG Terminal to declare on permanent basis. Particularly in relation to "common carrier re-gasification capacity" it should be noted that no LNG Import Terminal is developed with a common carrier capacity. "Common carrier" is a concept that is limited only to pipelines under the PNGRB Act. The provisions of the draft rules seeking to impose



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the concept on LNG Terminals is outside the scope of the PNGRB Act and shall be subject to legal challenge

8. Schedule II

The Schedule is presently drafted only for LNG Import terminals and will have to be changed for the various categories of LNG terminals mentioned above.

9. Schedule III Information

The Schedule is presently drafted only for LNG Import terminals and will have to be changed for the various categories of LNG terminals mentioned above.

Furthermore, even for LNG Import Terminals, items items 5, 6, 7 and 8 would not be possible for LNG Terminal to declare on permanent basis. Particularly in relation to "common carrier re-gasification capacity" it should be noted that no LNG Terminal is developed with a common carrier capacity. "Common carrier" is a concept that is limited only to pipelines under the PNGRB Act.

