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पी एन जी आर बी /	
PNGRB/	1642
दिनांक	2/11/2020

29 Oct 2020

The Secretary
Petroleum and Natural Gas Regulatory Board
1st Floor, World Trade Centre
Babar Road
New Delhi – 110 001

JALU
AACC
2/11

Ref: PNGRB Notification, FN. PNGRB/COM/2-NGPL/Tariff (3) 2014 Vol -IV (Part 1) (P-1439 - Unified Tariff for Transportation of Natural Gas.

Dear Madam,

PNGRB is seeking to amend Natural Gas Pipeline Regulations under the Petroleum and Natural Gas Regulatory Board (Determination of Natural Gas Pipeline Tariff) Second Amendment Regulations, 2020. The important proposed amendments are the introduction of "unified tariff for transportation of natural gas" such that the entities to become revenue neutral and consequently to introduce the Procedure for Determination of Unified Tariff and matters incidental thereto.

These proposed amendments are not only contradictory to the framework of the Existing Regulations and Authorizations of Bid out Natural Gas pipelines but also contrary to the provisions of the PNGRB Act as well as the proposed amendments go beyond the powers conferred on the Board for making such regulations.

GROSS VIOLATION OF SELECTION CRITERIA (PNGRB ACT & Authorization Regulations):

Section 19 (2) of the Act requires the Board may select an entity in an objective and transparent manner as specified by regulations for such activities.

The proposed amendments also are in direct violation of second proviso to sub regulation (4) of Regulation 5.

Under the Regulations, the selection of a successful bidder is predicated on the outcome of the evaluation of the Bidding Criteria under Regulation 7 read with Section 19 (2) of the PNGRB Act.

Regulation 7 clearly contemplates the selection of a successful bidder shall be on the basis of Lowness of the present value of the unit natural gas pipeline tariff quoted by the said successful bidder. While this criterion carries a weightage of 40% in general, an enhanced weightage of 70% is given to this criteria if the length of the natural gas pipeline is not more than 300 kilometres.

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The other sub regulations of Regulation 7 also base its evaluation criteria on the lowness of transportation tariff escalation rates. Therefore, the entire selection criteria were based only on the transportation rates quoted by the bidder.

Further the Regulations also prohibit the successful bidder from charging transportation rates more than the quoted price (on the basis of which the successful bidder was given the authorisation for laying, building, operating and expanding the natural gas pipeline).

Therefore, the unified tariff structure sought to be introduced by PNGRB directly contradicts the selection criteria followed in the bidding process and is in direct violation of the Section 19(2) of the Act and Regulation 7.

These changes are in the nature of post bid modification, which the Board is not empowered to do.

BEYOND THE FUNCTIONS AND POWERS OF THE BOARD (PNGRB ACT):

The proposal to introduce in the Regulations Unified Tariff Structure and the procedure to be followed in the Determination of such tariff is also contrary to the spirit of the Act and contrary to the purpose for which the PNGRB Board was formed.

Sec 2 (zi) "restrictive trade practice" means a trade practice which has, or may have, the effect of preventing, distorting or restricting competition in any manner and in particular,-

- (i) which tends to obstruct the flow of capital or resources into the stream of production, or
- (ii) which tends to bring about manipulation of prices, or conditions of delivery or to affect the flow of supplies in the market relating to petroleum, petroleum products or natural gas or services in such manner as to impose on the consumers unjustified costs or restrictions;

Section 11 (a), 11 (e) and (f)(vi):

One of the main functions of the Board is to

- (a) protect the interest of consumers by fostering fair trade and competition amongst entities;
- (e) regulate, by regulations,-
 - (i) 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;
 - (ii) transportation rates for common carrier or contract carrier;
- (f) in respect of notified petroleum, petroleum products and natural gas-
 - (vi) monitor transportation rates and take corrective action to prevent restrictive trade practice by the entities;



Section 22 – Transportation Tariff:-

(1) Subject to the provisions of this Act, the Board shall lay down, by regulations, the transportation tariffs for common carriers or contract carriers or city or local natural gas distribution network and the manner of determining such tariffs.

(2) For the purposes of sub-section (1), the Board shall be guided by the following, namely:-

(a) the factors which may encourage competition, efficiency, economic use of the resources, good performance and optimum investments;

(b) safeguard the consumer interest and at the same time recovery of cost of transportation in a reasonable manner;

(c) the principles rewarding efficiency in performance;

(d) the connected infrastructure such as compressors, pumps, metering units, storage and the like connected to the common carriers or contract carriers;

(e) benchmarking against a reference tariff calculated based on cost of service, internal rate of return, net present value or alternate mode of transport;

(f) policy of the Central Government applicable to common carrier, contract carrier and city or local distribution natural gas network.

The very purpose of the Act deduced from various provisions clearly shows that the formation of the Board is to regulate the transportation rates being charged by the entities, prevent restrictive trade practices, ensure healthy competition among entities;

The proposed amendment to the Regulations is a Gross violation of the most important function cast upon the Board viz. to regulate (through regulations) transportation rates for common carrier

Introduction of Unified Tariff Structure will therefore be in direct contradiction to the fair trade and competition among entities expected to be regulated by the Board under the Act

The Board which is expected to protect the interest of the consumers by ensuring fair trade and competition amongst entities, is now seeking to introduce through Regulations which is exactly contradictory to the purpose for which the Board was formed, thus acting beyond the powers cast upon the Board under the Act.

The proposed introduction of Unified Tariff Structure is beyond the powers granted to the Board under Section 11 of the PNGRB Act.

Beyond the Power of Board to make Regulations (Section 61):-

(1) The Board may, by notification, make regulations consistent with this Act and the rules made there under to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

- (e) regulating open access to and transportation rate for the common carrier or contract carrier or city or local natural gas distribution network and other matters referred to in clause (e) of section 11;
- (p) the manner of selection of an entity under sub-section (2) of section 19;
- (t) the transportation tariffs for common carriers or contract carriers or city or local natural gas distribution network and the manner of determining such tariffs under sub-section (1) of section 22;

The powers granted to the Board for making regulations requires the Board must exercise its powers consistent with the provisions of the Act.

Section 61(1) requires the Board to make regulations consistent with this Act and the rules made there under to carry out the provisions of the Act.

Such regulations making powers shall be consistent with the provisions which include:

- i. regulating open access to and transportation rate for the common carrier (Section 61 (2) (e));
- ii. the manner of selection of an entity under sub-section (2) of section 19 which shall be in an objective and transparent manner as specified by regulations for such activities;
- iii. to determine the transportation tariff for common carriers consistent with the provisions of sub-section (1) of section 22;

The proposed amendment to the regulations and the new regulations sought to be introduced is therefore beyond the powers of regulation making powers of the Board.

Based on the existing Natural Gas pipeline Regulations, PNGRB invites bids against ACBD and the bidders try to quote the lowest. This is done to be successful bidder by providing the lowest tariffs thus giving the lowest NPV for the 25 years tariffs. While bidding the bidders quote the tariffs keeping the tariffs competitive against competing pipelines. Competition is the basic tenet of business and the bidders keep that in mind while bidding the tariffs for the next 25 years. In the attempt to have unified tariffs for all the Natural Gas pipelines, PNGRB is attempting to kill the competition in business of Natural Gas transportation. In this whole attempt PNGRB is contradicting its own regulations, ACBD notifications and Authorization contracts. On one hand the invoicing entity cannot raise tariffs as per Regulations and Authorization but it has to raise tariffs for the purpose of unified tariffs in order to cross subsidise other pipelines.

However in case PNGRB is keen to bring unification of tariffs by amending Regulations then it should conduct it for the non-bid out pipelines from pre-PNGRB times. It may also conduct it for single organization pipelines. However providing cross subsidy to other pipelines for entities that have been bid out at very competitive rates will make them unviable and kill bid out pipeline projects. Low tariff pipelines are cross subsidizing the high tariff pipelines, resulting in benefit to higher tariff players. This is against PNGRB tenet of providing low tariff to customers and will act against viability of low tariff pipelines thus killing pipeline



business. The basic tenet that Natural Gas pipeline entity cannot raise tariffs for its own self but it can raise tariffs for other pipeline entity is neither legal nor ethical.

We sincerely hope that PNGRB does not move ahead with working ^{on} such ^a step of change of Natural Gas pipeline Regulations that is not legally upright as well as working against pipeline business.

Thanking you.

**Yours sincerely
for IMC Limited**

A handwritten signature in blue ink, appearing to read "Vimal Chopra", with a long horizontal flourish extending to the right.

**Vimal Chopra
President – Business Development**