

Date: 4th October 2021

To:
The Registrar,
Oil & Gas Regulatory Authority (OGRA)
54-B, Fazal-e-Hqa Road, Islamabad

The Senior Executive Director – Gas Dept.
Oil & Gas Regulatory Authority (OGRA)
54-B, Fazal-e-Hqa Road, Islamabad

Ref No: TEMPL-OGRA/LTR-0015

Subject: OGRA Gas Third Party Access Rules 2018, Pakistan Gas Network Code

Tabeer Energy Marketing Pvt Ltd. (TEMPL), a recipient of OGRA's Sales License for NG/RLNG is in the process of evaluating the Regulatory Framework governing the Third Party Access regime in Pakistan. In this regard, we would like to share some of our concerns with reference to certain ambiguities among the rules, regulations and agreements, i.e. the Third Party Access Rules, the Gas Network Code and the format of Access Agreement. We would like to solicit OGRA's clarification in connection with the following issues:

1) Conflict Resolution/Legal Assurances:

- 1.1 19th Article of The Third Party Access Rules stipulates that the provisions of the Rules prevail over any other arrangements or agreements and also provides that the Network Code shall prevail if and when conflicts arise between the Network Code and any other agreements including the Access Agreement.
- 1.2 At the same time, the form of Access Agreement attached to the Network Code states, in its Section 1.2, that "In the event of any inconsistency or conflict between any provision of this Agreement and a provision of the Network Code, ...*this Agreement shall take precedence and prevail [emphasis added]*." – it is thus apparent that this Section 1.2 contradicts the Article 19th of the Third Party Access Rules mentioned above.
- 1.3 Our understanding, supported by our legal consultant, is that the Network Code is intended to prevail over the Access Agreement – this implies that all terms and conditions set in the Access Agreement will be subject to any future changes or modifications to the Network Code. We humbly submit that this scenario creates uncertainty for TEMPL as a Shipper and the Shipper would be susceptible in terms of certainty of the terms and conditions agreed with a Transporter in the Access Agreement.

Q1) Although we sincerely acknowledge your understanding that a Shipper and a Transporter shall conclude an Access Agreement setting out specific terms and conditions to apply to such Shipper and Transporter beside the Network Code, we would like to hear your advice on how we can seek clear and legal assurance that the terms and conditions agreed between the contracting parties are sacrosanct and would prevail over any existing or future terms and conditions under the Network Code, taking into account the interests of all related parties in the liberated gas market.

2) Modification in Third Party Access Rules, Network Code

With regards to future changes and modifications to the Network Code, we would also like to clarify a few further points;

- 1.1 There seems to be some discrepancies on the modification process between the Third Party Access Rules and the Network Code. For instance, the TPA Rules provide that "Transporters may carry out modification of the Network Code after necessary consultation with the interested parties"; while the modification procedure which is set out in the Network Code provides that both a transporter or a shipper may propose modifications *and then* the Code Modification Panel will be held for consideration of such proposed modification.
- 1.2 In any event, considering the nature of the Network Code, we understand that its application is general and universal to all transporters and shippers. Therefore, if any proposed modification is in the public interest or in the interests of the gas market, neither a transporter nor a shipper should have a refusal right to prevent those modifications from made solely for their own interest and all and any unique and/or specific terms and conditions as agreed between any specific shipper and transporter should be set out only in the individual agreement between that shipper and transporter.

Q2) We request the esteemed Authority to also confirm that in the event when any future modification in the Network Code is proposed, and where such proposal is considered to contribute towards the liberalization of the Pakistan gas market, it shall only be considered only after deliberation and obtaining consent with the Shippers, some of whom have already entered into some form of Access Arrangement with the Transporter.

We appreciate the role and support of OGRA in its endeavor to develop and liberalize the Gas Market and its structure in Pakistan.

Sincerely,



Kosuke Makino
Chief Executive

Copy:

- Chairman OGRA
- Minister for Energy, Petroleum Division
- Minister for Maritime Affairs
- Federal Secretary, Petroleum Division, Ministry of Energy
- Director General, Directorate of Liquefied Gas, Petroleum Division